CONSTITUENT ASSEMBLY DEBATES

Book-2

Volume VII - 4th November 1948 to 8th January 1949

OFFICIAL REPORT

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CONSTITUENT ASSEMBLY OF INDIA

President :

THE HONOURABLE DR. RAJENDRA PRASAD

Vice-President :

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Constitutional Adviser :

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Deputy Secretary :

SHRI JUGAL KISHORE KHANNA

Under Secretary :

SHRI K.V. PADMANABHAN

Marshal :

SUBEDAR MAJOR HARBANS RAI JAIDKA

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Volume VII—4th November 1948 to 8th January 1949

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 4*th November* 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 THE REGISTER

The following Members presented their credentials and signed the Register:

(1) Shri H. Siddaveerappa (Mysore State);
(2) Mr. K. A. Mohammed (Travancore State);
(3) Shri R. Sankar (Travancore State);
(4) Shri Amritlal Vithaldas Thakkar [United State of Kathiawar (Saurashtra)];
(5) Shri Kaluram Virulkar [United State of Gwalior, Indore, Malwa (Madhya Bharat)];
(6) Shri Radhavallabh Vijayavargiya [United State of Gwalior, Indore, Malwa (Madhya Bharat)];
(7) Shri Ram Chandra Upadhyaya (United State of Matsya);
(8) Shri Raj Bahadur (United State of Matsya);
(9) Thakar Krishna Singh (Residuary States);
(10) Shri V. Ramaiah (Madras State);
(11) Dr. Y. S. Parmar (Himachal Pradesh).

TAKING—THE PLEDGE

The following Member, took the pledge.

Shri Syamanandan Sahaya.

HOMAGE TO THE FATHER OF THE NATION

Mr. President : Honourable Members, before we take up the items on the Order Paper, I bid you to rise in your places to pay our tribute of homage and reverence to the Father of the Nation who breathed life into our dead flesh and bones, who lifted us out of darkness of despondency and despair to the light and sunshine of hope and achievement and who led us from slavery to freedom. May his spirit continue to guide us. May his life and teaching be the torchlight to take us further on to our goal.

(All the Members stood up in silence.)

CONDOLENCE ON THE DEATHS OF QUAID-E-AZAM MOHAMMED ALI JINNAH, SHRI D. P. KHAITAN AND SHRI D. S. GURUNG

Mr. President : I ask you, Members, to stand in your places to pay our tribute of respect to Quaid-e-Azam Mohammed Ali Jinnah, who by his grim determination and stead fast devotion was able to carve out and found Pakistan

[Mr. President]

and whose passing away at this moment is an irreparable loss to all. We send our heartfelt sympathies to our brethren across the frontier.

(The Members stood up in silence.)

Mr. President : Two Members have died since the Constituent Assembly met in its constitution-making function. They are Shri Debi Prasad Khaitan and Shri Damber Singh Gurung from Darjeeling. They represented their constituencies very faithfully and were of considerable help in our deliberations. I ask you to rise in your places to show our respect to their memory.

(The Members stood up in silence.)

AMENDMENTS TO CONSTITUENT ASSEMBLY RULES 5-A & 5-B

Mr. President : We shall now proceed to take up the items on the Order Paper. The first item is a motion by Mr. Govinda Menon and also by Shrimati Durgabai, of which notice has been given. I would ask Shrimati Durgabai to move it.

Shrimati G. Durgabai (Madras : General): Sir, I beg to move:

That the provisions mentioned in the Constituent Assembly Notification No. CA/43/Ser/48-I, dated the 2nd August 1948, be made part of the Constituent Assembly Rules, as shown in the amendments below, with effect from the 2nd August, 1948:—

(i) Rules 5-A and 5-B —

For Rules 5-A and 5-B substitute the following Rule: —

"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 or more than one Indian State specified in column 1 of the Annexure to the Schedule to these rules, the President shall notify the vacancy and make a request in writing to the authority specified in the corresponding entry in column 3 of that Annexure to proceed to fill the vacancy as soon as may reasonably be practicable by election or by nomination, as the case may be, in the case of the States specified in Part I of the said Annexure, and by election in the case of the States specified in Part II of that Annexure:

Provided that in the case of the States specified in Part I of the said Annexure, where the seat was filled previously by nomination, the vacancy may be filled by election:

Provided further that in making a request to fill a vacancy by election under this rule the President may also request that the election be completed within such time as may be specified by him."

(ii) In Rule 51—

"(b) 'Returned candidate' means a candidate whose name has been published in the appropriate Official Gazette as a duly elected member of the Assembly and includes a candidate whose name has been reported to the President in the manner provided in paragraph 5 of the Schedule to these rules as a duly chosen representative of any Indian State or States specified in column 1 of the Annexure to that Schedule."

(iii) In the Schedule —

For paragraphs 3, 4, 5 and 6, substitute the following paragraphs:

"3. (1) When the representation allotted to the States, individual or grouped in the Assembly, or the grouping of the States for the purpose of such representation is altered by an order made under paragraph 2, or by an amendment of the Annexure to this Schedule, the President may, by order—

(a) re-assign members representing a State or States to such State or States as may be specified in the order;

(b) declare the seat or seats of any member or members of the Assembly representing any State or States affected by an order under paragraph 2 or an amendment of the Annexure to this Schedule, as the case may be, to be vacant.

(2) Any member who has been re-assigned to a State or States by an order made under clause (a) of sub-paragraph (1) and whose seat has not been declared vacant under clause (b) of that sub-paragraph shall as from the date of the order be deemed to be a duly chosen representative of such State or States.

(3) A member whose seat is declared vacant by an order made under clause (b) of sub-paragraph (1) shall, if it is so specified in the order, continue to hold office as member of the Assembly until his successor has been duly elected and has taken his seat in the Assembly.

"4. (1) Not less than fifty per cent of the total representatives of the States specified in column 1 of Part I of the Annexure to this Schedule in the Assembly shall be elected by the elected members of the legislatures of the States concerned, 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 authorities specified in the corresponding entries in column 3 of that Part.

(2) All vacancies in the seats in the Assembly allotted to the States specified in column 1 of Part II of the Annexure to this Schedule shall be filled by election and the representatives of such States to be chosen to fill such seats shall be elected by the elected members of the legislatures of the States concerned, 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 authorities specified in the corresponding entries in column 3 of that Part.

5. On the completion of the election or nomination, as the case may be, of the representative or representatives of any State or States specified in column 1 of the Annexure to this Schedule in the Constituent Assembly, the authority mentioned in the corresponding entry in column 3 of that Annexure shall make a notification under his signature and the seal of his office stating the name or names of the person or persons so elected or nominated and cause it to be communicated to the President of the Assembly."

Sir, before I commend my motion to the House for its acceptance, I wish to say a few words of explanation as to why and how these amendments to the rules have become necessary.

Sir, Rules 5-A and 5-B of the Constituent Assembly Rules lay down the procedure for filling a casual vacancy in the office of a member representing an Indian State or more than one Indian State and the Schedule to the Rules prescribes the allocation of seats in the various States or groups of States and the manner of choosing the States representatives and also the method of appointing conveners for purposes of conducting election. These Rules 5-A and 5-B were based on conclusions reached by the two Negotiating Committees set up by the Chamber of Princes and also by the Constituent Assembly.

Sir, since then, as it is common knowledge, many changes of a far-reaching character have taken place and these changes have taken place both in the constitutional as well as in the administrative set up of these States. For example, certain States have formed themselves into Unions and certain others have merged into neighbouring provinces and still certain others have been constituted into Centrally Administered Areas.

Sir, these changes in their turn affected radically in the case of some the existing scheme of representation in the Constituent Assembly. Consequently, it became necessary to re-group these several States and to re-allocate seats among them and also change the conveners for the purpose of conducting elections and also make necessary changes in the rules of the Constituent Assembly. All these matters were considered at a meeting of the Honourable the President and of the Honourable the Minister of States and also the Rajpramukhs and the Premiers of the Union and the States concerned and also the Premiers of various provinces affected by these changes and also of the officials of the Secretariat of the Constituent Assembly and of the States Ministry; and the decisions reached at that Conference are now embodied in these provisions which are now sought to be incorporated in the Constituent Assembly Rules.

Now, Sir, the most important feature of these changes in the provisions is that in the case of newly formed group or Union of the States—Cutch and

[Shrimati G. Durgabai]

Junagarh, which have been given separate representation in the Assembly — all the vacancies in the seats are to be filled by election by the elected members of the Legislatures of the States or where such legislatures do not exist, by any other Electoral College which is set up for that purpose.

Under the old Rules some of them could be filled by nomination. Sir, as you have already noted the various changes, I do not think that I need elaborate these points. I commend my motion to the House for its acceptance. Sir, I move.

Mr. President : I have received notice of certain amendments to this motion. Mr. Kamath.

Shri H. V. Kamath: (C. P. & Berar: General): Mr. President, Sir, I move:

"That in sub-para, (1) of the proposed paragraph 3 of the Schedule, for the words `to the States, individual or grouped in the Assembly' the words `in the Assembly to the States, individual or grouped' be substituted."

That is to say, if the amendment is accepted, it will read thus: Now it reads, "When the representation allotted to the States, individual or grouped in the Assembly". In the place of this, it will read, "When the representation allotted in the Assembly to the States, individual or grouped....." I do not think I need speak much on this amendment. It is self evident and the meaning that is sought to be conveyed by the paragraph is as represented in my amendment. Certainly, the States individual or grouped as they are, is not for Assembly purposes. Therefore, it should be "representation allotted in the Assembly to the States, individual or grouped." This is the first amendment.

Sir, the second amendment runs thus:

"That in sub-para. (3) of the proposed paragraph 3 of the Schedule, for the words 'is declared vacant' the words 'has been declared vacant' be substituted."

This is purely, if I may say so, a linguistic amendment. I think it refers to the state of affairs arising after a seat has been declared vacant. The wording "when a seat has been declared vacant" is more correct and more accurate.

I therefore commend these amendments of mine for the acceptance of the House. Sir, I wish to speak on the motion. May I speak ?

Mr. President : Yes.

Shri H. V. Kamath: Sir, I seek some clarification on certain points that have arisen from the motion moved by my honourable friend Shrimati Durgabai. Sir, the potential strength of this Assembly is 324. I am given to understand that the actual strength today is 303. Twenty one members who are to represent Hyderabad, Kashmir and Bhopal are not present with us. Even as regards the remaining 303, the papers yesterday brought us the news that the Patiala and East Punjab States Union have not elected their representatives to this Assembly. I do not know why these States or Union of States or groups of States should continue to be unrepresented in this last and most important session of the Constituent Assembly. As regards Kashmir I agree there are difficulties. As regards Hyderabad which now forms one of the States specified in Part I of the Annexure, it takes top rank among the States. I do not see why we should not call upon the Ruler of Hyderabad to elect or to elect and nominate as the case may be in accordance with the provisions of this resolution, and send representatives to take their place in this Session as early as possible. In view of the recent events that have taken place, a happy denouement—I hope the House is in agreement with me that we have had a happy termination of the Hyderabad episode—we wish to welcome

our friends, our colleagues from Hyderabad as soon as possible in this Assembly. As regards Bhopal, I do not know what difficulties stand in the way, what stumbling block there is in the way, what obstacle has to be surmounted, so far as the participation of Bhopal in this Assembly is concerned. I would plead with you and I would request that the Bhopal authorities should also be called upon at once to send their members to this Assembly with the least possible delay.

Then, Sir, the report which appeared in the press yesterday as regards Patiala and East Punjab States Union was not very clear. It alleged all sorts of things against the administration and against the Ruler; but, whatever it may be, I think it is high time that this Union of Patiala and East Punjab States should be called upon to send their representatives to this last session of the Constituent Assembly.

There is another point which I would like to draw your attention to. In the Rules that have been framed by us during the previous sessions. We have stated—I refer to Rule 5 sub-rule (2)—"Upon the occurrence of a vacancy, the President shall ordinarily make a request in writing to the Speaker of the Provincial Legislative Assembly concerned, or as the case may be, to the President of the Coorg Legislative Council, for the election of a person, for the purpose of filling the vacancy as soon as may reasonably be practicable." Here, now that in some of the States mentioned in Part I of the Annexure—I am sorry I cannot say off hand which States have got elected legislature functioning—take for instance, Mysore; it is a big State and it has already sent its representatives to this Assembly—so far as such States are concerned, I see no reason why in future, instead of the Ruler, the Speaker or President of the Assembly should not be requested to fill the vacancies that may arise. It may be argued against this that the Rule as it stands, 5-A provides for the Ruler being the authority in this case. But, as we are amending the Rules, why not amend certain provisions of these Rules so as to make them more in conformity with democratic practice and democratic traditions? Therefore, I would ask my honourable friend Shrimati Durgabai to explain why, in the case of those States where we have got Assemblies functioning, the Speaker or the President should not be the authority instead of the Ruler. On this point, I would ask some more light from the mover of the motion.

Sir, before I resume my seat, I commend my two amendments to this motion for the acceptance of the House. Thank you, Sir.

Mr. President : Mr. Sidhwa.

Shri R. K. Sidhwa (C. P. & Berar : General): Mr. President, Sir, my amendment was—

"That in sub-para. (1) of the proposed paragraph 4 of the Schedule, delete the words 'Not less than fifty per cent' of and for the words 'the total representatives' the words 'The total number of representatives' be substituted."

The object of my amendment was that while we have done away with the nomination system in our Constitution, it would not be fair to allow the States, particularly the Rulers to nominate the 50 per cent. I therefore, with that object in view and just in conformity with our decision for abolishing the nominations, suggested the abolishment of this also. I however understand that an arrangement has been arrived at between the Rulers and the people of the State and the States people have agreed to this arrangement being continued and I am also told that although this is there, the representatives are all elected by the people themselves. If that is so as I understand it is so, I do not propose to move this amendment.

Mr. President : Do you move the amendment or not?

Shri R. K. Sidhwa : I do not move it, Sir.

Mr. President : All the amendments of which I have notice, so far as this motion is concerned, have been moved. I have received a complaint from one Member that the agenda and amendments have been circulated here and he did not get them before and so he has not been able to give notice of amendments and he wants that the discussion be adjourned. I understand from the Secretariat that the agenda and other papers were circulated some days ago but they were sent to the addresses that were then known to the office and it is possible that the Members during the course of transit have not been able to get the papers that were sent to them and by way of caution a second copy has been supplied here today. It is not as if the agenda and the papers have not been circulated. Only the second copies have been given today. I do not think there is any ground for adjourning the discussion of this motion particularly because after all it is more or less a motion of a formal nature, because we have already acted upon these Rules and they are not likely to be acted upon in the future when this session of the Assembly is over.

Shri Mohanlal Gautam (United Provinces : General): *[I have no objection in complying with your order. But I submit that the information supplied to you by the office is incorrect. Many of the Members have not received copies of the agenda. Not I alone but two or three of my colleagues also who are present here have not received it. I am in greater difficulty as my telephone also has been disconnected even though they had already taken from me the subscription for the whole year. Twice I have referred this matter to the Deputy Minister for Communications but telephone connection has not yet been restored. When I came here I telephoned from another place to the Deputy Secretary, Constituent Assembly, and informed him that no copy of the agenda had been received by me and that the telephone connection also had not been restored. This is the situation of the Members and I would like to make my protest against it. Had it been so with me alone, you could have adopted this course. But there are many members present here who have not received the agenda. The Deputy Minister Shri Khurshed Lal is also one of them. He also denies having received a copy of the agenda. I don't know how it was circulated but even he complains of not having received it. Twice I complained to him that my telephone connection had not been restored even though the subscription money had been realised by them for the whole year. You have reduced us Members to this miserable plight. As for the agenda. I am not the only Member to complain about it. Many Members have not received it. There are important items on the agenda and as a protest I demand the postponement of its consideration.]

Mr. President : *[Copies of the agenda were sent to the Members by the office. Whether it did reach the Members or not is a matter for Shri Khurshed Lal to answer. It is also his responsibility to see whether telephone connections have been provided or not. I do not think that there is any important reason to adjourn the House. If any Member wants to speak on this matter he may do so.]

Mr. Hussain Imam (Bihar : Muslim): *[I would like to suggest that you are empowered to admit the amendments which are, even now, received from Honourable Members. That would leave no room for grumbling.]

Mr. President : *[As I have not received any amendment as yet, the question does not arise.]

Shri Shyamanandan Sahaya (Bihar : General): *[Mr. President, I request that those amendments which have been moved should be considered if they need consideration. But first of all a chance should be given to the mover . . . . .]

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* [ ] Translation of Hindustani speech.

Mr. President : *[Had I received any amendment I would have allowed it to be moved in the House. But no amendment has been received. Now, you want that this discussion should be postponed so that there might be an opportunity to move an amendment. But as yet I have no amendment before me.]

Shri Shyamanandan Sahaya: *[Mr. President, in this connection it is submitted that your orders are binding on all. If the copy of the agenda is lost in transit the purpose of sending it, — and it is that the Members may go through it and may form their opinion — is defeated. Consequently if it could not reach the Member or if there is any delay or error in its despatch from the Assembly office, and thereby if any Member did not receive the agenda, then in my opinion it requires consideration whether the resolution may be taken up for consideration on that day or not. I want to draw your attention to this fact.]

Mr. President: *[I do not think it necessary at this stage, for such questions are not before us as require prolonged discussions and postponement of the debate to some other day and stoppage of our proceedings today.]

Dr. P. S. Deshmukh (C. P. & Berar : General): Mr. President, Sir, I do not have to make the complaint that some of the honourable Members of this House have made, although I must say that I did not get the agenda before yesterday, and that is the reason why it was not possible for me—my stenographer not having arrived—to send in my amendments to the various Rules. It is quite clear that the Rules are pretty lengthy and therefore the amendments are also likely to be of a similar nature. I hope therefore that you will kindly pardon my not having sent in my amendments and the few amendments that I propose would be considered by the Honourable Mover of the Motion. The first amendment I would suggest is—

"In the first part of Rule 5-A instead of 'an Indian State or more than one Indian State' substitute the words 'one or more Indian States'."

I personally think it is better English in that way. My second amendment is—

"Instead of the words 'make a request' the word 'direct' be substituted."

It should be possible for you Sir, to direct the authorities specified in the corresponding entry in column 3 of that Annexure. I do not think it is in consonance with the dignity of the office you hold or the position of this Constituent Assembly that it should be necessary to request a petty State or the authority existing therein to hold the elections. We, as Members of the Constituent Assembly are summoned by you. I would therefore suggest the adoption of the above amendment.

Similar words are used in the second proviso. There also the word 'request' has been used. That also should be changed to 'direct'.

There is also one more amendment I would suggest so far as the second proviso is concerned. I suggest that—

"The proviso as it stands be substituted by the following *viz*. 'Provided further that in directing to proceed to fill a vacancy by election under this Rule the President may also direct that the election be completed by a certain date'."

The change is to replace the words "making a request to fill" by the words "directing to proceed to fill". The word "request" is changed into "direct," and the concluding words—'within such time as may be specified by him'—are proposed to be changed by the words "by a certain date".

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* [ ] Translation of Hindustani speech.

[Dr. P.S. Deshmukh]

The wording in paragraph 3 (1) on page two may read better if it were put as follows:

"When the representation allotted to any States, jointly or individually, in the Assembly or the grouping of the States for the purpose of such representation is altered by an order made under paragraph 2, or by an amendment of the Annexure to this Schedule, the President may by order— . . . . . ."

The alteration would be to change the word "the" into "any", and to omit the words "individual or grouped in the Assembly", by merely saying "jointly or individually".

This amendment of mine is very similar to the one moved by Mr. Kamath. I think he was somewhat hesitant in suggesting a wholesale alteration of the clause. That is why the suggestion he has made, although it has the same intention, does not express it so correctly as the suggestion made by me. I hope, Sir, it will be possible for the honourable Mover to consider the various amendments suggested by me, and if possible to accept them.

Shri Biswanath Das (Orissa : General) : Sir, I have just given notice of an amendment. Before moving it I would like to explain the position as it is today.

In part 1 to the Annexure, Mayurbhanj State has been mentioned with one representative and the Returning Officer is the Ruler of Mayurbhanj. But it has been decided by the States Ministry that the State of Mayurbhanj cannot stand singly by itself and it has been agreed that it shall merge into the province of Orissa, along with the twenty-three other States that have already merged.

Mr. President : Has the Mayurbhanj State already merged or is it a proposal?

Shri Biswanath Das: I believe they have signed a certain agreement and they are going to hand over the State to the Government of India and that an Administrator has been already appointed and that he is going to take charge of the State. Under these circumstances, I believe there is no justification for treating Mayurbhanj State as a separate identity, and again to recognise the Ruler of Mayurbhanj State as the Returning Officer. I do not know, and I cannot say whether the Government of India have actually intimated to the Government of Orissa that Mayurbhanj State is to merge in Orissa. But this much I can assure you, and through you the Honourable Members of the Constituent Assembly that this is the expressed view of the Government of India that it shall be merged into the province of Orissa. Therefore, there is absolutely no purpose in bringing in something which will undo what has been already done and decided by the States Ministry with the full concurrence of the State of Mayurbhanj, the people and also the province of Orissa.

Therefore, Sir, I beg to move an amendment, which is (I have given notice of it just now):

"Omit Mayurbhanj with its representation of one and the Ruler of Mayurbhanj as the Returning Officer from Part I of the Annexure."

I further move:

"That the State of Mayurbhanj be added to the Orissa States in Part II of the said Annexure, substituting 24 for 23 and also under the column of representation substituting 5 for 4, including 1 from the State of Mayurbhanj, and the Governor of Orissa to continue as the Returning Officer.

This is the complete amendment that I place before the Honourable Members of the Constituent Assembly and think that it is a necessity.

If you propose to give separate representation and a separate identity to Mayurbhanj, that means you propose to perpetuate the independent existence of smaller States, a policy which has been refuted and not accepted by the States Ministry and the Government of India. Therefore, my amendment is just to give effect to the very idea which has been accepted, adumbrated and

followed in principle and in practice by the States Ministry and the Government of India.

Mr. President: I may point out to Members that so far as the States are concerned, the question has been in a state of flux. There have been so many changes going on from day to day that it has been difficult to keep pace with them. The proposal is based upon the recommendation of the States Ministry, and the proposal was reached at a conference at which not only the Prime Ministers of all the provinces concerned but also of the States concerned and Rajpramukhs were present, and there were representatives of the States Ministry as also of the Constituent Assembly, and these proposals are in conformity with recommendations of that Conference. If there has been any change since then, we have no notice of that change. Besides, there will be no difficulty in altering any of the rules subsequently if a change has taken place. So I would suggest to Shri Biswanath Das that he need not apprehend that there is any question of perpetuating smaller States. At the moment we are proceeding upon facts that we know and we are recognising those facts and making the rules in conformity with those facts. As soon as a change in those facts takes place, and we are informed of that change, we shall change the rules accordingly. So I would suggest to him not to press his amendment at this stage. We can take up the matter as soon as the States Ministry is in a position to tell us that this ought to be changed.

Shri Biswanath Das: An officer of the States Ministry is here. These are the salient facts. I do not dispute them but I beg of him not to dispute the facts that I have placed before him.

Mr. President : I do not dispute his facts. I only say that I have received no intimation from the States Ministry to that effect and therefore we are proceeding upon what we have from the States Ministry. As soon as we have information, there will be no difficulty in changing the rules. That can be done at any sitting.

Shri Biswanath Das: You are going to take charge of the State. The moment newspapers published that the Constituent Assembly has given separate representation to the State I assure you that there will be tremendous trouble to be faced not by me or the people of Orissa but by the very administrator that is going to be appointed by the Government of India. Under these circumstances I appeal to you, knowing as you do the difficulties of the situation and as a person having an intimate knowledge of the areas and the people concerned, not to tread on dangerous ground. I do not want to press my amendment. I have only brought this matter to your notice as also to the notice of the Constituent Assembly.

Mr. President : I think the newspapers will not only publish the fact that Mayurbhanj has been given separate representation but also the statements which I have made and you have made. Along with these statements the information by itself will have no effect of the kind that you apprehend and I would therefore suggest to the honourable Member not to press his amendment.

Shri Ram Sahai [United State of Gwalior, Indore, Malwa (Madhya Bharat)]. *[Mr. President, I would like to know if an amendment which is contrary to the principles accepted by the Negotiating Committee can be moved to the amendment now before us. For example 50 per cent is fixed in it. Is it possible to move an amendment that instead of 50 per cent, all the members should be elected or that they should be nominated by the Raj Pramukhs or that the members must be elected on the basis of the electoral rolls that had been prepared before in the States? I would like to know whether an amendment can be moved which goes beyond the principles accepted by the Negotiating Committee.]

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* [ ] Translation of Hindustani speech.

Mr. President : I think we have to be very cautious in dealing with the States. We are proceeding on the basis of agreements entered into with the States and here we should not say or do anything which may have the effect of going back upon any agreement which has been made with the States. All these amendments are based upon agreements which have been made between the States Ministry and the States concerned. The House will remember that originally there was one set of agreements but that has become out of date and therefore we have a second set of agreements. All these amendments are based upon these agreements and I would therefore suggest that nothing should be done to go back upon any of the agreements that have been entered into.

I would ask Mr. Sidhwa not to press his amendment . . . . . .

Several Honourable Members: He has not moved it.

Shri S. Nagappa (Madras : General): Sir, I beg leave of the House to move the amendment of which I have given notice just now. I am in agreement with the original motion but as regards the Annexure Part I, third column (*viz*, Authority for the purpose of the choosing of representatives in the Constituent Assembly) I propose to move an amendment to the word "Ruler" of Hyderabad, Mysore, Kashmir and so on. I would like to say that the rulers today do not have the real ruling power, as it has been transferred to the people of the State, especially since August 15th 1947. So, Sir, I think the ruler of any State should not be made the authority for the purpose of choosing representatives in the Constituent Assembly, as he has not got the authority to choose. What is the good of calling someone an authority who really has not got that authority? To me it does not look to be in order. I shall be thankful if the Honourable the Mover accepts my amendment:

"That for the word 'Ruler' in column 3 of Annexure Part I the word 'people' be substituted."

If you find that this is not in order then for instance, the Speaker of any Assembly, which has been elected by the people of that State, occupies a more important place than that of the Ruler. No doubt the Ruler is there as a nominal figurehead but the real person who rules is either the Prime Minister who has been duly elected by the people of that State or the Speaker of the Legislative Assembly, wherever there is one. So, Sir, I would request that the Honourable the Mover would accept this simple amendment. I have proposed a simple amendment and I need not explain it further. I hope the House will be good enough to accept it.

Mr. President : I might point out that the Honourable Member's amendment is wholly misconceived. It is not as if the Ruler is going to nominate the representatives. The Rulers have to be addressed for the purpose of getting the representatives elected by the bodies who have the right to elect them. The Ruler does not come in in any other way.

Shri S. Nagappa: That is exactly my point. You are addressing the Ruler but the Ruler has not got any authority to elect. What is the good of asking a person who does not possess the power? The actual power is not with the Ruler but with the people of the State. So the representatives should be elected by the people of the State—either the Speaker of the Assembly wherever there is an Assembly functioning or the Prime Minister or the Raj Pramukh who has been duly elected. They will be the proper authority. Even for the sake of form it should not be there.

Mr. President : I have pointed out the position to the Honourable Member but if he wants to press his amendment.....

Shri S. Nagappa : There is no question of pressing the amendment. I have understood, Sir, your point. You have been kind enough to enlighten me that the ruler is only a figurehead and is meant for the purpose of addressing

someone. But what I say is, what is the good of addressing a Ruler who has not got the authority and who has transferred his authority to the people of the State?

Mr. President: Every order of the Government of India also goes in the name of the Governor-General, although it is the Ministers who pass the orders. The position is exactly similar.

Shri S. Nagappa: Sir, I accept your advice and I leave it to you.

Shrimati G. Durgabai: Mr. President, I do not think I have much to say by way of replying to the points raised by several Honourable Members of the House and I am thankful to you, Sir, that you had taken upon yourself the task of explaining some of the points raised by Honourable Members. I would not refer to the points raised by Shri Biswanath Das and Shri Nagappa, because the Honourable President has sufficiently dealt with those points.

With regard to the amendment moved by Dr. P. S. Deshmukh, I think the existing expression, 'make a request in writing' is more happily worded than that suggested by him and is also very courteous, I do not think there is need for a change. His other amendment also I cannot accept for the same reason.

With regard to the point raised by Mr. Kamath in his amendments, I may say that I appreciate it and have great pleasure in accepting his amendments. They are really verbal amendments and I accept them.

He has raised the question of Hyderabad and Kashmir in this connection. I do not think it is for me to say anything on the points he has raised about those States; but I feel that those points are irrelevant to the motion I have moved here. I commend my motion to the House for its acceptance.

Shri H. V. Kamath: Mr. President, I have not moved any amendment and therefore the question of irrelevancy does not arise, I only wanted to know whether Hyderabad, Bhopal and Kashmir would send their representatives to the Assembly. I only wanted some light and clarification on the point.

Mr. President : I shall put the amendments to vote. The amendment of Mr. Kamath runs thus:

"That in sub-para (1) of the proposed paragraph 3 of the Schedule, for the words" 'to the States, individual or grouped in the Assembly', the words 'in the Assembly to the States, individual or grouped' be substituted.

This has been accepted by the mover.

The amendment was adopted.

Mr. President : The other amendment of Mr. Kamath, *viz*., "That in sub-para. (3) of the proposed paragraph 3 of the Schedule, for the words 'is declared vacant' the words 'has been declared vacant' be substituted" is now for the vote of the House. This has also been accepted by the Mover.

The amendment was adopted.

Mr. President : Then there are the amendments of Dr. Deshmukh. So far as the wording of one of them at any rate is concerned, it has been already accepted when Mr. Kamath's amendment was accepted. The other amendment is only a question of taste whether we should make a direction or a request. As Dr. Deshmukh has not withdrawn it, I shall put it to vote. The amendment is:

"In the place of the word 'request' the word 'direct' should be used."

The amendment was negatived.

Mr. President : I shall now put the amendment of Dr. Deshmukh to Clause 3 (i) of the Schedule to vote.

The amendment was negatived.

The amendment of Mr. Biswanath Das was, by leave of the Assembly withdrawn.

Shri S. Nagappa's amendment was, by leave of the Assembly, withdrawn.

Mr. President : The motion, as amended, is for the vote of the House.

Shri H. V. Kamath: Would you please tell us whether Hyderabad and Kashmir would send their representatives to this Assembly?

Mr. President : I am not in a position to give any information on that point. The Government, if they liked, would have given you the information by now.

The motion, as amended, is for the vote of the House.

The motion, as amended, was adopted.

Mr. President : Srimati Durgabai may now move her second motion.

AMENDMENT TO THE ANNEXURE TO THE SCHEDULE

Shrimati G. Durgabai: Mr. President I beg to move the following motion:

"That the provisions mentioned in the Constituent Assembly Notification, No. CA/43/Ser/48-II, dated the 3rd August 1948, be made part of the Constituent Assembly Rules, as shown in the amendments below, with effect from 3rd August 1948."

Annexure to the Schedule—

For the Annexure to the Schedule substitute the following Annexure:—

ANNEXURE

PART I

Name of State or States	Number of seats allotted in the Constituent Assembly	Authority for the purpose of the choosing of representatives in the Constituent Assembly
1	2	3
HYDERABAD	16	Ruler of Hyderabad
MYSORE	7	Ruler of Mysore
KASHMIR	4	Ruler of Kashmir
BARODA	3	Ruler of Baroda
TRAVANCORE	6	Ruler of Travancore
COCHIN	1	Ruler of Cochin
JODHPUR	2	Ruler of Jodhpur
JAIPUR	3	Ruler of Jaipur
BIKANER	1	Ruler of Bikaner
BHOPAL	1	Ruler of Bhopal
KOLHAPUR	1	Ruler of Kohlapur
MAYURBHANJ	1	Ruler of Mayurbhanj
SIKKIM AND COOCH BEHAR	1	Ruler of Cooch Behar
TRIPURA, MANIPUR, KHASI STATES	1	Ruler of Tripura
RAMPUR, BENARAS	1	Ruler of Rampur
TOTAL	49	

PART II

	Name of State or States	Number of seats allotted in the Constituent Assembly	Authority for the purpose of the choosing of representatives in the Constituent Assembly
	1	2	3
		ORISSA STATES	
(23)	Athgarh Athmalik Bamra Baramba Baudh Bonai Daspalla Dhenkanal Gangpur Hindol Kalahandi Keonjhar Khandpara Narsinghpur Nayagarh Nilgiri Pal Lahara Patna Rairakhol Rampur Sonepur Talcher Tigiria	4	Governor of Orissa.
		CENTRAL PROVINCES AND BERAR STATES	
(15)	Bastar Changhbhakar Chhuikadan Jashpur Kanker Kawardha Khairagarh Korea Nandgaon Raigarh Sakti Sarangarh Surguja Udaipur Makrai	3	Governor of Central Provinces and Berar.
		MADRAS STATES	
	Banganapalle Pudu Khotai	1	Governor of Madras.
		BOMBAY STATES	
	Rajpipla Palanpur Cambay Dharampur Balasinor Baria Chhota Udepur Sant Lunawada Bansda Sachin Jawhar Danta Janjira Sangli	4	Governor of Bombay.

[Shrimati G. Durgabai]

PART II—*contd.*

Name of State or States	Number of seats allotted in the Constituent Assembly	Authority for the purpose of the choosing of representatives in the Constituent Assembly
1	2	3
BOMBAY STATES—*contd.*		
Savantvadi Mudhol (35) Bhor Jamkhandi Miraj (Sr.) Miraj (Jr.) Kurundwad (Sr.) Kurundwad (Jr.) Akalkot Phaltan Jath Aundh Ramdrug Idar Radhanpur Sirohi Savanur Wadi Vijaynagar Jambughoda 271 minor States (thanas , etc.)	4	Governor of Bombay.
HIMACHAL PRADESH		
Bashahr Sirmur Chamba Mandi Suket Baghal Baghat Balsan Bhajji (21) Bija Darkoti Dhami Jubbal Keonthal Kumharsain Kumihar Kuthar Mahlog Mangal Sangri Tharoach	1	Chief Commissioner of Himachal Pradesh.
United State of Kathiawar (Saurashtra)	4	Rajpramukh of the State.
United State of Matsya	2	Rajpramukh of the State.
United State of Rajasthan	4	Rajpramukh of the State.
United State of Vindhya Pradesh	4	Rajpramukh of the State.
United State of Gwalior, Indore, Malwa (Madhya Bharat)	7	Rajpramukh of the State.
Patiala and East Punjab State Union	3	Rajpramukh of the Union.
Cutch	1	Chief Commissioner of Cutch.
Junagadh	1	Administrator of Junagadh.

PART II—*contd.*

Name of State or States	Number of seats allotted in the Constituent Assembly	Authority for the purpose of the choosing of representatives in the Constituent Assembly
1	2	3
RESIDUARY STATES :		
Jaisalmer Sandur Tehri-Garhwal Bilaspur BIHAR STATES Seraikela Kharsavan EAST PUNJAB STATES Laharu Pataudi Dujana	1	Chief Commissioner of Himachal Pradesh.
Total	40	
GRAND TOTAL OF PARTS I AND II	89	

Shri H. V. Kamath: Mr. President, the amendment I have given notice of is an extremely simple one and a purely verbal one intended to add the definite article 'the'. It reads:

"That in part II of the proposed Annexure to the Schedule, for the words 'Governor of Central Provinces and Berar' in the 3rd column under the heading 'Central Provinces and Berar States', the words 'Governor of the Central Provinces and Berar' be substituted."

I would invite your attention and the attention of the House to the name by which my province is known in official documents and records. In our draft Constitution, of which we have all got copies, in Schedule I, Part I, page 159 where the list of the various provinces has been given, you will find my province described as the Central Provinces and Berar.

Mr. President : I do not want you to adduce arguments in support of this amendment.

Shri H. V. Kamath: I move the amendment and commend it for the acceptance of the House.

Mr. President : Do you accept that?

Shrimati G. Durgabai: I accept that.

Mr. President : The amendment is that the word "the" be added before the words "Central Provinces and Berar".

The amendment was adopted.

Mr. President : The motion, as amended, is now put to vote.

The motion, as amended, was adopted.

Addition of New Rule 38-V.

Shrimati G. Durgabai: Sir, I beg to move that the following amendment to the Constituent Assembly Rules be taken into consideration:

After rule 38-U insert the following—

"38-V. When a Bill referred to in Rule 38-A is passed by the Assembly, the President shall authenticate the same by affixing his signature thereto. When the Bill is so authenticated it shall become an Act and shall be published in the *Gazette of India."*

[Shrimati G. Durgabai]

Sir, before I commend my motion for the acceptance of the House, I consider it my duty to offer a few words of explanation as to why this amendment has become necessary. Sir, I am sure that Honourable Members are aware that during the last session of the Constituent Assembly when it met on the 27th January, certain amendments were proposed and accepted by this House to the rules of the Constituent Assembly, and one of those amendments was to introduce a new rule 38-V laying down the procedure for passing of the Bills referred to in Rule 38-A. Sir, that proposed rule 38-V raised a good deal of controversy and objections were raised by some Honourable Members on the ground that a Bill passed by the Constituent Assembly for amending the Indian Independence Act or the Government of India Act 1935 as adapted by that Act should not be subject to the assent of the Governor-General since such a procedure might detract from the sovereign character of the Assembly. Another objection was raised on the ground that, if that rule was adopted, the consequence would follow that the Governor-General might give or withhold his assent even to a Bill seeking to amend the existing constitution. Another objection was raised on the ground that there should not be any difference between the procedure to be adopted for passing the Draft Constitution and for passing a Bill seeking to amend the existing Act. These objections were discussed and after prolonged discussion, the suggestion made by Mr. Kamath to refer the proposed rule back to the Draft Committee for re-examination in the light of the objections raised, was accepted. This suggestion was accepted by the House and the rule was referred back to the Drafting Committee. The Drafting Committee has considered this rule and their fresh proposal is before the House. Sir, this new rule dispenses with the assent of the Governor-General to any Bill passed by the Constituent Assembly under Rule 38-A. The original rule reads thus:

"When a Bill referred to in Rule 30-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 think Members have understood the significance of the change proposed and that I need not elaborate this point. I commend my motion for the acceptance of the House.

Mr. President : Mr. Kamath has tabled an amendment to this to substitute the words "has been" for the word "is".

Shri H. V. Kamath: Mr. President, Sir, I move:

"That in the proposed rule 38-V for the words 'when the Bill is so authenticated' the words `When the Bill has been so authenticated' be substituted."

This amendment, Sir, is entirely similar to the one which has been accepted by the House with regard to another motion moved by my honourable Friend. Mrs. Durgabai. I think it will be happier and more in consonance with the rules of idiom and usage to substitute the words "has been" for the word "is" so that, if the amendment is accepted, the proposed rule will read:

"When a Bill referred to in rule 38-A is passed by the Assembly, the President shall authenticate the same affixing his signature thereto. When the Bill has been so authenticated, it shall become an Act . . . ." etc.

I commend this amendment for the acceptance of the House.

Mr. President : The motion has been moved and also an amendment to that. If any Member wishes to speak on the motion, he may do so now.

Shrimati G. Durgabai: I accept the amendment.

Mr. President : It seems there is nobody who wishes to speak on the motion. The mover has accepted the amendment. I first put the amendment to vote.

The amendment was adopted.

Mr. President : The motion, as amended, is now put to vote.

The motion, as amended, was adopted.

PROGRAMME OF BUSINESS

Mr. President : We will now go on to the next item on the agenda but before doing so, I would like to explain to the House the procedure which I propose to follow in dealing with the Draft Constitution. Members are aware that the Draft Constitution was prepared by a Drafting Committee which was appointed by this House and the Draft was placed in the hands of Members nearly eight months or more ago. Members were asked to send in any suggestions or amendments which they wished to make and a large number of suggestions and amendments were received not only from Members but also from the public and public bodies, provincial governments and so forth. The Drafting Committee has considered all these suggestions and amendments and they have redrafted many of the articles in the light of the suggestions made by either Members or the public. So we have now got not only the Draft as it was originally prepared, but also the redraft of a number of the Articles which the Drafting Committee had prepared in the light of suggestions received. These have been placed in the hands of Members. What I propose now to do is to take up each Article after we, of course, have passed this motion for consideration and I shall take all these amendments of which notice has been given already as having been given in time, so that Members who have already given notice of amendments need not repeat the notice after the motion for consideration has been adopted. I will also give to Members two days more forgiving notice of any further amendments which they wish to propose to the Articles. And then, I propose not to accept any other amendments, unless they are of such a nature that it becomes necessary to accept them. Of course, there will be amendments which may be consequential and those will have to be accepted. There may also be amendments which for other reasons may be considered by the House to be of such a nature that they should be considered; I will not burke discussion of those amendments; I shall have them also. But ordinarily I would ask the Members to confine themselves to the amendments of which we have already got notice and they are, I believe, about a thousand in number. In this way we might economise time without in any way affecting our efficiency and without in any way putting any check on free discussion of all the Articles of the proposed draft. This is what I propose to do, of course, subject to what the House lays down. I think this is quite reasonable in view of the fact that Members have had such a long time to consider; and that they have considered in detail the draft is apparent from the fact that we have already got notice of about a thousand amendments, and if by any chance any amendment has been overlooked and if any member feels its consideration to be necessary, we shall take it, but ordinarily I will not take any further amendments after this. What I propose is that we discuss the motion, which Dr. Ambedkar will move, for two days, that is, today and tomorrow, when we sit both in the morning and in the afternoon and we give Saturday and Sunday for giving notice of amendments to the members. All the amendments of which we have already received notice and of which we shall have received notice by 5 o'clock on Sunday will be tabulated, printed and placed in the hands of Members by Monday, and then we proceed with the discussion of the amendments from Tuesday. That is the programme which I have outlined in my mind.

There is another thing which I might tell Members. There is a motion of which notice has been given and there is also an amendment of which notice has been given that this House should adjourn discussion of the

[Mr. President]

Constitution altogether and a new House on adult franchise and on non-communal lines should be elected and that House should deal with the question of framing the Constitution. I do not know if the House will be prepared to throw away all that we have been doing during the last two years, particularly because there is in the Draft an article which gives a somewhat easy method of amending the Constitution during the early years after it comes into force and if there is any lacuna or if there is anything which needs amendment, that could easily be done under the provision to which I have just made reference, and it is, therefore, not necessary that we should hold up the consideration of the entire Constitution until we have adult franchise. The difficulty will be in the first place to form the electorate under adult franchise; we have no such law existing at present. Adult franchise we have contemplated in this Draft Constitution and it will come into force when this Constitution has been passed. So if you want to have adult franchise and if you want to have another Constituent Assembly for the purpose of drafting the amendments, we shall have to pass another law and I do not know which House will have the right to pass that law which will constitute a Constituent Assembly. So I think it would be best to proceed with the draft which we have prepared after much labour and to which so much care and attention has been given by the Drafting Committee and by the Members of this House.

This is the programme which I propose to follow and if there is any other suggestion which any member wishes to make, I shall be glad to consider it. There is only one thing more which I might mention and that is this. I do not wish to curtail discussion. I want to give to members the fullest opportunity for considering every article and every aspect of the Constitutional question, because, after all, it is going to be our Constitution, but at the same time, I do not like that we should spend more time than is absolutely necessary over it by repeating arguments which have already been once advanced by one Member or another or by going over the same ground. For that reason, we may not reconsider many of the decisions which have already been taken. Members know that we had long discussions, and after long discussions we settled the principles of the Constitution and the Draft, the bulk of it, is based upon those decisions which were taken after long discussion by this House. I would not expect that the Members would lightly throw away those decisions and insist upon are consideration of those decisions. There may be cases where a reconsideration may be necessary. But ordinarily, we shall proceed upon the decisions which have already once been taken and it is only where no decisions have yet been taken that the House may have to take decisions for the first time. Now there are certain questions on which no decisions have been taken. There were certain committees appointed by the House. The reports of those Committees were not considered. But the Drafting Committee has taken care to place in the draft alternative proposals, one set of proposals representing their own views where they differ from those of those Committees and another set of proposals embodying the recommendations and the decisions of those Committees. So when we come to those particular provisions, the House may consider them on their merits, and after considering them on their merits may accept either the opinion of the Drafting Committee or of the Committee. The House will have the draft ready, so that it will not have to wait for preparing a draft on these questions. When we consider this whole matter from this point of view, I think, after all, the scope for discussion gets very much limited, because most of the amendments will be more or less of a drafting nature, because the decisions have already been taken, and so far as the drafting is concerned, the Drafting Committee has already considered many of these suggestions and amendments and it has accepted them. So, while there may be discussion of principle in regard

to some questions which have not been decided, there is not much to discuss so far as principles are concerned, because we have already discussed those principles and we have arrived at certain conclusions. Therefore, what I feel is this, that if we proceeded in a business-like way, it should be possible for us to complete discussion of the whole Constitution by the second anniversary of the day on which we started the work of this Constituent Assembly, that is, by the 9th of December next.

If we succeed in doing that, after that we might have a few days adjournment, when all the amendments which have been accepted by the House will be considered by the Drafting Committee and put in their proper places, when all the re-numbering and re-allocation of the Articles from one Chapter to another and so forth—all that becomes necessary—all that could be done within that interval of say ten or fifteen days. Then, we might meet a second time when we could finally accept the Constitution as it will have emerged. In this second discussion, under the Rules, we shall not go into the merits of any question; we shall have only to see that the amendments as they were accepted by the House have been incorporated in the final form in which the draft is placed before the House.

This is the proposal which I place before the House and I think this ought to meet with the approval of the members of this House.

Seth Govind Das (C.P. & Berar : General): *[Mr. President, I would like to know whether after adoption of the article relating to the national language, clauses which might have been passed by then in English would be placed before this House for adoption in Hindi.]

Mr. President : *[Yes, of course, all the clauses would be reconsidered in that language which may have been adopted as the national language. There would be no discussion at that time on the clauses as such. The only point for consideration would be whether the clause has been correctly translated or not. I, therefore, think that our discussions should be based on the English draft at present, for all those who have given thought to the draft and those who have prepared it, have done so in that language only. And when clause relating to the national language is finally adopted we would put up the translation of the Constitution in that language before you for adoption.]

Pandit Balkrishna Sharma (United Provinces : General): Sir, I wish to draw your attention to this very important question which my honourable friend Seth Govind Das has raised before the House.

Shri Mahavir Tyagi (United Provinces : General): *[Mr. President, I would like to submit that before we proceed to discuss fundamental questions, it appears desirable that you should decide what the procedure would be for tabling amendments. Shall the old procedure be followed or the one which you have stated now? It is necessary so that we may have some idea of the order in which debate would proceed, and the time we would be allowed for sending in amendments.]

Mr. President : *[Both will be decided simultaneously.]

Pandit Balkrishna Sharma: Sir, I fail to see where the point of order lies. As a matter of fact, I only wanted to draw your attention to one thing. Before you call upon the Honourable Dr. Ambedkar to move that the Draft Constitution be taken into consideration, I should like to draw your attention to the question which has been raised by my friend Seth Govind Das. After the motion which the Honourable Dr. Ambedkar is to move has been carried, we shall certainly consider the Constitution clause by clause. As you know, Sir, I am one of those who had given notice that the National language of India be Hindi and the script

* [ ] Translation of Hindustani speech.

[Pandit Balkrishna Sharma]

the Devnagari script. Naturally, the question will arise when we take into consideration one clause after the other of our Constitution, as to which language will it be in which the Constitution shall be deemed to have been passed. My suggestion, therefore, before you will be that when we consider the clauses of the Constitution, after finishing one Chapter of it, we must revert in Hindi and pass every clause as has been amended by this House and as has been translated in that language by a Sub-Committee of this House. I would therefore request you, Sir, that before you take up the consideration of the Constitution clause by clause, you may be pleased to appoint a Sub-Committee of this House which will keep itself in touch with the clauses and the amendments that the House wishes to make therein and as they are passed, and that Committee should get these clauses translated and these clauses, after finishing one Chapter, may again be brought before the House in Hindi and it could be deemed to have been passed in Hindi also. So that, after some time, when we have ultimately done away with the English language, the original must be considered to have been passed in Hindi, and it should be the ultimate authority, the authentic Constitution. If we do not adopt any such course, I think we shall be greatly handicapped at the time when I think article 99 of the Constitution comes before us and we declare our language as Hindi and the script the Devnagari script. I think there is some difficulty before my South Indian friends. They can easily say that "this Constitution at present is in the English language which we all understand, you call upon us to pass every clause in Hindi, and we do not know the language." I think those of my South Indian friends who do not know Hindi to such an extent may rely on the better sense of their colleagues. Here, in this House, there are friends who do not know English and yet they rely upon your good sense and they do not raise the objection that they do not know the English language and therefore this Constitution is not good. Similarly, they may try to accommodate us in this matter.

Mr. President : I think it will cut short discussion on this point if I explain what I propose to do in regard to this matter. There is a motion of which notice has been given that a Committee should be appointed for the purpose of preparing a translation and that translation should be passed Article by Article by this House, and that should be treated as the original. There is something to that effect of which notice has been given. What I propose to do is this. Members are aware that we have got translations prepared: there is a translation in Hindi; there is a translation in Urdu; there is a translation in Hindustani; all these three translations of the Draft Constitution are ready and I believe members have received copies of these translations. As soon as the question is decided as to what will be our language, we shall set up a Committee which will take up that particular translation which is ready and see to it that it conforms literally to the original in English. Whatever our sentiments may dictate, we have to recognise the fact that most of those who have been concerned with the Drafting of the Constitution can express themselves better in English than they can in Hindi; it is not only a question of expressing in English or Hindi, but the ideas have also been taken from Constitutions of the West. So the expressions which have been used have, many of them, histories of their own and we have taken them bodily from the phraseology of Constitutions of the West in many places. Therefore it could not be helped because of the limitation of those who were charged with drafting that the draft had to be prepared in English. I do not think we have lost anything by that but when once a particular article is finally adopted in this House in the English language, we shall see to it that as correct and perfect a translation is produced as possible and in the language which will be accepted by the Constituent Assembly as the language for our national purposes. So I would ask the Members not to

anticipate the discussion which we shall have on the question of language. That will come a little later but I promise this that as soon as that question is settled, we shall have the translation revised or prepared in that particular language which is accepted and we shall put the translated Constitution also before the House for acceptance.

Seth Govind Das: *[Mr. President, you had made a specific commitment that when the constitution would be placed before us, its original would be in our national language. I had also put a question to you at that time and in your reply also you did say that the original draft of the Constitution to be placed before us would be in our language. But the draft Constitution placed before us by Dr. Ambedkar is in English. As the Constitution now placed before us is in English I would like to know when the Constitution originally drafted in our national language and about which you have given us an assurance will be brought before us].

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General): *[Mr. President, I would like to inquire whether after the adoption of the article relating to the National language, each clause would be taken up in the National Language for adoption just in the same manner as the clauses in the English Draft are taken up for final adoption after these have been duly amended.]

Mr. President : *[Every article will be taken up.]

Pandit Balkrishna Sharma: Sir, I only want to make this suggestion that before taking up the Constitution clause by clause will it not be better if you very graciously permit us to take up the question of national language and have a decision about it. Because if we first take up the question of the national language and decide it, then once for all the hatchet is buried (*Cheers*). You can have the discussions of 10 or 15 clauses in English. The Committee will be getting the translations ready the next day and the whole translation of that part will be before the House which will be called upon to take it into consideration and then it shall be deemed to have been passed by the House. Therefore I suggest you may be pleased to permit this House to take up the question of the national language first before taking up the Constitution clause by clause. The question of national language comes in somewhere in clause 99 of the Constitution which may take long. This question bristles with many difficulties and some of us feel it to be fundamentally embedded with our future. There are other members who do not attach importance to it. Therefore I would request you to take up this question first and give us an opportunity to decide it and afterwards like the Constitution in English clause by clause and then give us opportunity to take them in Hindi as well.

Mr. President : May I state that the very reason which he has adduced for taking up the question of language in the beginning has induced me to put it off to a later stage. The reason which he has given is that there are differences of opinion, some people holding very strongly one view and others holding the other view equally strongly. I suggest that it is much better to discuss at any rate the fundamentals of the Constitution in a calm atmosphere before our tempers have got frayed. I therefore suggest that we should go on with the Constitution and discuss each item and when we have done that much—it will not in any way prejudice the question of language—the language question will be decided on its merits by the House and when that decision has been taken, every article will be passed ultimately in that language also. Therefore nothing is lost. Only, we do not lost temper to begin with.

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* [ ] Translation of Hindustani speech.

Shri R. V. Dhulekar (United Provinces : General): *[Mr. President, Sir, the proposal that I want to place before you is this. On the first occasion when I delivered my speech in Hindi in this House, I had moved an amendment to the effect that the Constitution should be framed in our national language and that the English version should be treated as its translation. Therefore I want to submit that when the discussion on the English version of the Constitution is over and it has been fully passed and when with your permission a decision has also been reached in regard to the National language, I shall place the proposal before you that the Constitution in the national language should be considered as the original one. It will be insulting for us to adopt the translation of the English version. No nation has so far done so.

I admit that the Members would speak in English in this debate. I shall also speak in English and in fact want to do so but later I shall speak in Hindi. I wish to inform you that I want to place before you a motion when this discussion is over. It will be to the effect that the English version of the Constitution will be considered the translation of the Constitution in the national language and the latter will be taken to be the original one. The English version will be styled as translation. I request that I may be told as to when I may table that motion before you.]

Mr. President : *[This Assembly is entitled to say whether the constitution will be passed in Hindi or Urdu and that version will be taken to be the original one. The other versions will be considered as its translations. You have the power to do so.]

Shri Suresh Chandra Majumdar (West Bengal : General): Sir, your orders came regarding the translations. Complete translations have been made in certain languages and I have no quarrel with that but in the process of Constitution making it is imperative that the people of our country—whatever may be their spoken language—they should understand it. So in your scheme of translation if you will kindly include, in addition to Hindi and Urdu, other major languages of India, it would be very convenient for everyone to understand and thereby, whatever may be the Rashtrabhasha afterwards, it will not be said that the proceedings were carried on in a language or languages which were not intelligible to all parts of the country. This is my suggestion. I have no disrespect for Hindi nor have I any attachment to English but as the Constitution is a very important thing. I think it should be made intelligible to all the people of the country. So my prayer is you might kindly include in your scheme of translation at least the major languages of India and I don't think it will be difficult for you to arrange that.

Pandit Hirday Nath Kunzru (United Provinces : General): Mr. President, you have made an announcement regarding the procedure you propose to follow in connection with the Bill before us, that will have a very important bearing on the discussions that will take place shortly. You have drawn our attention to two points.

The first point is that as the principles underlying this Bill were accepted by the Assembly a few months back, no amendment should be brought forward which would question any of these principles or would seek to make any alteration in them. Sir, this is a matter . . . . . .

Mr. President : I qualified that by "ordinarily".

Pandit Hirday Nath Kunzru : It all depends on how the Chair will interpret this word. But I remember that when the discussions on the principles embodied in the Bill were going on, it was said several times that we should have a better opportunity for expressing our opinions later when the whole picture was before us. This is a matter that, I venture to think, Sir, deserves your serious attention. We might, a few months back, have accepted certain

* [ ] Translation of Hindustani speech.

conclusions, but if, either after studying the Act as a whole, or after further reflection, any of us comes to the conclusion that any of these principles should be modified or completely altered, his right to express his opinion should not be questioned.

Mr. President: I may say at once that I do not propose to rule out any discussion. It will be for the House to decide whether it will go back on any of its decisions. As Chairman, I do not propose to rule out any discussion or reconsideration.

Pandit Hirday Nath Kunzru: The House will certainly have the right to decide whether it will go back on any of its previous decisions. If it does not approve any change in the principles accepted by it some time ago, it will be open to it to throw out any suggestion for a change made by any Member. But what I have said, is due to the fact that I am under the impression that it was your intention to rule out certain amendments.

Mr. President : I am sorry if I left that impression.

Pandit Hirday Nath Kunzru: I am very glad to hear from you, Sir, that this is not your intention. It is therefore not necessary for me to discuss this aspect of your pronouncement any more.

I now come to the second point which you asked the House to bear in mind in giving notice of amendments in future. You said that you would allow amendments to be proposed till 5 o'clock on Sunday next, but that thereafter you would not admit any new amendment for discussion, unless it seemed to you to relate to a matter of importance. I think, Sir, we all appreciate the substance of what you have said. As far as possible, our discussion should be canalized in proper channels and should relate to such points only a sought to be considered by the House again. Your advice therefore in regard to the character of the amendments would naturally carry great weight with every Member of this House. But I submit, Sir, that no amendment, no matter when received, ought to be automatically ruled out on the ground that it was not received by 5 o'clock on Sunday afternoon. It is the duty of the Chair to regulate the discussion and I have no doubt that every Member of this House is anxious to help the Chair in its onerous task, particularly as the Chair is occupied by a person of your eminence. But we have under the rules certain definite rights of which every Member of the House ought to be jealous. We have under the rules the right to give notice of amendments at any stage we like, and provided they are received within the time allotted by the rules, our right to put forward new amendments cannot be questioned. It cannot be questioned even by you, Sir.

I therefore suggest that when you consider any amendment that is proposed, to be superfluous, or to relate to a very unimportant matter, you may well advise the Member concerned to save the time of the House by withdrawing it. But should he insist on expression his view, even on an unimportant matter, I hope that you, whose duty it is to maintain our rights and privileges unimpaired, will not take away by executive discretion his right to propose his amendment. Sir, this is a matter of great importance. It relates to a question of principle. I do not think that in practice any conflict will arise between the Chair and any Member of this House but I am anxious that no right, not even the least, that the rules enable us to enjoy should be taken away from us or whittled down either directly or indirectly. I hope that my observation will receive the attention of the Chair and that my remarks will be taken in the spirit in which they have been made. We all mean to be respectful to you. We listen to whatever you say with great attention and with a desire to act up to your advice but we do earnestly request you not to make any attempt to trench even on the smallest of our privileges. We ask you to stand up for them should anybody attack them and I trust that the discussion will be carried on in such a way as to enable us to feel that you are the

[Pandit Hirday Nath Kunzru]

guardian of our dignity and privileges and will maintain unimpaired every right that the House enjoys at present under the rules.

Mr. President : I hope I have not given any cause so far in this Assembly to any Member to complain that I have acted in such a way as to take away any of his rights and I hope to continue the tradition in the future also.

Maulana Hasrat Mohani (United Provinces : Muslim): Sir, I beg to draw your attention to the fact that I have already given notice of a motion to the effect:

"That the consideration of the Draft Constitution of India be postponed till the election of a fresh and competent Constituent Assembly on the basis of Joint Electorates and the formation of political rather than communal parties in India."

I also beg to draw your attention to your ruling when I proposed an amendment to the same effect on the occasion of the presentation of the report on the principles of a Model provincial constitution, *viz.,* that the consideration of the provincial constitution be postponed unless and until we have considered the Union Constitution . . . . .

Mr. President : We shall take up your amendment in due course.

Maulana Hasrat Mohani: I want to place my motion first.

Mr. Hussain Imam (Bihar : Muslim): The motion that the Bill be considered has not been made and therefore the amendment cannot be moved at this stage.

Mr. President : That is what I am saying. We shall take it up in due course.

The Assembly then adjourned for Lunch till Three of the Clock.

The Assembly re-assembled after lunch at Three of the Clock, Mr. President (The Honourable Dr. Rajendra Prasad) in the Chair.

Shri Mahabir Tyagi: Mr. President, before we rose for lunch, the question put before you for your consideration was whether the procedure which you had announced regarding the discussions here held good or whether you will please accede to the request made by my friend Pandit Hirday Nath Kunzru. According to the rules we have the right to give two days' notice of amendments if they are to be considered valid. I need not quote the relevant rule. It is known to everybody. We followed it last time. When the draft of the Constitution was sent to us, I and many others here thought naturally that the same old procedure with regard to discussion will be followed. Now, many of my friends may not have sent in their amendments in full in the hope that we would discuss these matters here and then give notice of our amendments after a discussion between ourselves. The old arrangement of two days' notice enabled us to meet in groups or parties and discuss and send in amendments. If this practice is to be guillotined and we are not to be permitted to give notice of amendments as we proceed clause by clause, it will not be fair for those who have only just now joined the Assembly. There are many who have signed the Register today and got the papers of the Assembly a few hours ago. The draft Constitution is a huge volume which we want to read and consider. If you accede to the request of my friend Mr. Kunzru and permit the new-comers to study the Draft Constitution as the discussion proceeds it will facilitate them to send their amendments in time and have their say. Otherwise, the new arrivals will not be accommodated at all.

Mr. President, we are the Constituent Assembly and are making the Constitution. An ordinary law which is considered by the Legislative Assembly and passed can be amended once every month or so. But the Constitution is not amended every now and then. We are making a Constitution for centuries to come and it cannot be amended easily, as easily as we can amend a legislative enactment. Therefore, full facilities should be given to the Members of this House to have their say.

Therefore, I repeat the request that you may please consider that the two days' time given in the rules is not taken away and allow amendments subject to their relevancy to the motion under consideration. Amendments may not be moved which have the effect of negativing the main motion except as permitted by the Chairman. Notice of amendments to a motion must be given one clear day before the motion is moved in the Assembly. This rule being there, I submit, unless we change the rules.....

Mr. President : The relevant rule is 38-0.

Shri Mahabir Tyagi : It says:

"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."

Do you mean to interpret this rule 38-0 in such a way that the whole Constitution . . . . . .

Mr. President : I hope the Honourable Member will not drive me to give a decision on that point today. You had better leave it there. *(Laughter).*

Shri H. V. Kamath: Arising from the pronouncement made by you this morning, may I seek clarification on two points?

Shri Algu Rai Shastri (United Provinces : General): *[Mr. President, I find that Honourable Members stand up to intervene in the debate. I request that I may also be given a chance to speak.]

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* [ ] Translation of Hindustani speech.

Shri H. V. Kamath: May I seek a little clarification of the announcement you made this morning? You were pleased to say that the Assembly would adjourn on 9th December for a few days. Do we adjourn on that day irrespective of whether we complete the consideration of the Constitution or not?

Mr. President : Nothing of the sort. I only suggest some sort of time table which I consider to be fair. It is for the House to decide whether they would go on up to 9th of December next year. (*Laughter*).

Shri H. V. Kamath: Are we going to have a recess from 9th December to a date to be specified later?

Mr. President : It all depends on the business on hand. I have suggested more than once that I do not want to curtail discussion. As we are considering the Constitution of the country, we shall not do anything in a hurry; but at the same time I do not want to waste time.

Shri H. V. Kamath: Are we going to adjourn on the 9th December, irrespective of whether we complete the consideration of the Constitution or not?

Mr. President : That we shall see.

Shri H. V. Kamath: You were pleased to remark in the morning as regards the non-participation of Hyderabad and Bhopal, that it is a matter entirely for the Government to consider. Mr. President, according to our Rules you have power to call upon the rulers of Hyderabad and other States to send representatives to the Constituent Assembly. But, you were pleased to say that it is a matter in the hands of Government. I do not know how the Government comes into this affair. You are fully authorised to call upon the rulers to send their representatives to the Assembly.

Mr. President : Sitting in this Assembly, I have no right to compel anybody to do anything. Those who have come in are entitled to participate in the deliberations of this Assembly and those who have not come, we cannot force them to come. It is for the Government to deal with them.

Shri Algu Rai Shastri: *[Mr. President, as far as I remember you had announced in the last session that the Constitution to be presented here would be in Hindi and that it might be translated into English. But the statement you have made today has been a source of disappointment in as much as we learn that we have to discuss the very Draft that has been prepared by the Drafting Committee in English. We have before us its Hindi version also. I do not understand why we should not take into consideration the Hindi version of the Draft when it is before us. We may take up for consideration the Hindi version of the Draft clause by clause and if any portion is found to be translated in rather difficult language. Dr. Ambedkar who himself is a great scholar of the Sanskrit language, may explain such portion from the English Draft to those who are unable to follow the version in Hindi. It is necessary for every county to frame its constitution in its own language. We belong to a country that has its own language. We should therefore discuss it clause by clause in our own language. The Draft prepared in a foreign language should not be presented to this House for discussion.

Sir, perhaps you remember that at the commencement of the first session of the Constituent Assembly I made a request that the discussion in this House should be carried on in a language which is understood by the people of this country. We should not proceed in this House as if it were the British Parliament. The word 'Dominion' is entirely foreign in character. I remember a saying of the late Moulana Mohammad Ali. He used to say that the word 'Dominion' might be applicable to Africa, South Africa, New Zealand, Australia and Tasmania. These are the dominions where our alien rulers had founded

* [ ] Translation of Hindustani speech.

colonies and established cantonments. But India cannot be said to be a cantonment for the British. They went to the countries I have already named and established there their colonies and cantonments; they also carried their language with them and the people of those countries are English speaking. But this cannot be said in our case. We have our own language, our own civilization which has come down to us through hundreds of centuries; so also we have our own literature. Just as the English people can take pride in their literature, in Shakespeare and Milton, we too can be proud of the works of our Kalidas, Tulsidas, Jayasi and Soordas. It will be matter of deep shame for a country which has developed a language of its own, to frame its first free Constitution in a foreign language. Therefore, I would like to entreat you, to pray to you that the Hindi version of the Draft Constitution should be placed before this House as the original Draft of the Constitution. The clauses of the Hindi version should be discussed here and the English Draft should not be presented here for discussion. It should be treated only as a translation.

The English have quit India. Their cantonments are no longer here. Following your example and the example of your colleagues and other respected leaders who have immortalized their names in our history by eliminating the English rule from our land and whose names have become memorable, we should remove the word 'Dominion' from the Draft and I am sure it will be removed. It will, I think be agitated in detail in this House and many Members would express themselves on it. But this is a matter for future discussion. Just now the question before us is whether we have any language of our own and a culture of our own; whether we have a language of our songs, of our poems and for the expression of our thoughts and emotions. We should frame our Constitution in the same language in which we would express our feelings. The Preamble of the Draft says: "We, the people of India . . . . . give to ourselves this Constitution." Here the term "We, the people of India" means not the few men who are sitting in this House but the dumb millions of India and on whose behalf we are functioning here. Therefore the Constitution that is being presented here must be in the language we understand. It is a matter of regret that many of our veteran leaders have begun to say that the problem of language has not yet been solved; that our language has not been reformed and that English has to stay. Such things are said sometimes. I do not want here to mention the names of those leaders. But since they say that we have no language of our own, I want to tell them that ours is a developed language, a rich language which is capable of expressing high thoughts and sentiments. It has a rich and a good vocabulary. We have inherited our language from our ancient sages, we have inherited it from Kautilya's Artha Shastra, from our ancient literature which has such gems as the Mahabharat and the Ramayana. We have developed our language taking words from these epics. Therefore it can not be said. . . .]

Mr. President : *[Excuse me, I do not understand what you are discussing. All the matters to which you are referring are those on which there is already considerable agreement.]

Shri Algu Rai Shastri: *[I am only submitting that the original draft of the Constitution which we are to discuss here should be in Hindi and not in English. Therefore we should have liberty to table amendments on the clauses of the Hindi version of the Draft treating it as the original one. I beg to propose this with the idea that it would indicate that we have our own language. We do not deem our land to be such a dominion within the British Empire as can express itself only in English.

I would like to say a few words more. Fortunately or unfortunately our brethren who live in those coastal regions where the English landed for the

* [ ] Translation of Hindustani speech.

[Shri Algu Rai Shastri]

first time have acquired considerable proficiency in English. It is they who feel the greatest embarrassment when Hindi is mentioned as the national language. It had been the great good fortune of the people of Madras that their scholars gave to India a sublime message based on the Vedic literature and culture. Similarly it was their lot that the English . . . . . .]

Mr. President : *[I would like to point out to you that you are continuing to talk on a subject on which there is no dispute. All admit that we can and will frame our constitution in our language. There is no scope for any further discussion on this matter. Previously also the question has been discussed many times and I am sure that at the appropriate occasion it will be adopted.]

Shri Algu Rai Shastri: *[I am talking at present, of tabling amendments in Hindi.]

Mr. President : *[You can table amendments in Hindi if you so desire. But how can an amendment in Hindi fit in the clause that is in English. There will be difficulty for me but, however, if you wish to table any amendment in Hindi you can do so.]

Sardar Bhopinder Singh Man (East Punjab : Sikh): *[Mr. President, I want to invite your attention to the fact that while discussing the Report of the Minorities Board this House had decided on the last occasion that the consideration of the problem of Sikh rights should be held up as the conditions in the East Punjab were not normal. Today, we have got before us recommendations relating to all minorities but so far Sikhs are concerned, no decision has been taken as yet.]

Mr. President : *[When this question is taken up you will be free to say what you want to say about it.]

Sardar Bhopinder Singh Man: *[Sir, You have observed that amendments may be sent within two days but nothing has been decided regarding this question.]

Mr. President : *[You can send your amendments, after a decision has been taken in this matter.]

Mr. Hussain Imam : Mr. President, Sir, I do not wish to prolong the discussion on this subject. I simply wish to draw your attention to two important points. The rule as framed is all-comprehensive, the time of two days is given for giving amendments before the Constitution is taken up. Your discretion, Sir, is still left wide open, and I hope it will be used generously. I am saying this not that I am not convinced that it will be used generously but to assure my friends that, if there is anything material, they can rely on you that it will be given favourable consideration.

There is a second point on which I require your indulgence. Amendments to amendments can only come forward when the amendments are before the House. Therefore in that category you will have to relax your ruling and give us an opportunity to give amendments to amendments even after that time.

Mr. President : Certainly.

Mr. Hussain Imam: Thirdly, I wish to stress that this controversy about language may be happily solved if all those friends of ours who are interested in the Hindi version are formed into a Committee from the beginning to go forward with the work of translating or putting forward a Hindi version also. Amendments also may be sent in Hindi provided the office arranges to give us an English translation as well. So in this manner we will be able to achieve both the objectives. An amendment may be given in any language

* [ ] Translation of Hindustani speech.

which is approved by the Constituent Assembly provided a translation appears on the Order Paper simultaneously.

Fourthly, I should like to invite the attention of the House to the fact that the Constitution is being made for—I would not say for generations—as long as it serves our purpose. The United States of America has made amendments to its constitution and about twenty amendments have already been made. There the process is so difficult. As you will remember, that not only has to be got through the two Houses, but it must be approved by each unit of the U.S.A. Our position is not so bad. But there is one thing, Sir, on which I would require your indulgence, and that is the question of the boundaries of existing or new provinces. That matter, Sir, after the constitution will become so difficult that I am sure it will become well nigh impossible to do anything towards this end. If it is the will of the House that the present boundaries should be changed in any manner, it would be meet and proper that before we finalise the Constitution in the next session after the recess, we should have a picture of the provinces as they will be constituted in the immediate future and not leave it for further action in a remote future.

Mr. President : I think that the suggestion is somewhat premature. We are awaiting the report of the Commission which we have appointed and we shall consider it at that stage.

Mr. Hussain Imam: Before finalising, we may be able to move amendments to those recommendations as and when it comes up. I simply invite the attention of the House to the urgency of the matter and to the matter being given full consideration and finalization.

Shri R. V. Dhulekar: *[Sir, I submit that the period of two hours that will be given to us tomorrow for general discussion is too short. It is a different matter that hundreds of amendments will be received. When every member gets an opportunity of expressing his views, the amendments that are tabled after a discussion of a few days, are altered. The amendments are not referred to in the discussion. Therefore I request that if we are given three or four days' time for discussion and every Member is asked to observe the rule that he should not speak for more than fifteen minutes, every Member then will have the satisfaction that he has made his contribution in the House in the framing of the constitution. I submit that one day means only five hours time. If Dr. Ambedkar takes it up at four today and takes half the time tomorrow, there will hardly be left any time for us. Therefore I humbly request that we may be given an opportunity of speaking on this highly important constitution. The opportunity of framing the constitution does not come over and over again and everyone desires to speak out whatever he has to say for his country and nation. I want to submit also that whatever we speak here is not meant for this House only or for the present time only. Whatever is spoken here will be read even after hundred or two hundred or four hundred years and the people will come to know of the views of their ancestors on a particular point. They will interpret it accordingly. Therefore, Sir, I think we the Members in this House will be highly obliged if at least four days are granted to us. Everyone of us wants only fifteen minutes and I want to tell you on behalf of other Members also that if this opportunity is given to us, we shall sit together and come to a decision regarding the hundreds of amendments that may be brought forward and the Members of this House will help you in finalising the constitution as quickly as possible.]

Mr. President : *[We shall consider this later on. The time now being spent on the preliminary discussion reduces the time available for detailed discussion. Therefore, I would ask that you allow the real work to start.]

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* [ ] Translation of Hindustani speech.

Pandit Thakur Dass Bhargava (East Punjab : General): *[Mr. President, at the very outset I would like to enquire whether the Honourable Dr. Ambedkar has given any notice of his intention to introduce the Draft Constitution as required by the Rule 38-L or not. I am asking for this information, because if no such notice has been given, I am afraid he can not move for consideration. According to the rules five days' notice is necessary.]

Mr. President: *[Yes! It has been included there. It has been included in the Agenda. It being a re-draft all the amendments will be taken up again.]

Pandit Thakur Dass Bhargava: *[Another point which I wanted to bring to your notice falls under Rules 38-M. The copy of the draft constitution, which is a re-draft, has been given to us just today at the time when you were adjourning the House for lunch, whereas it should have reached us much earlier. I think all the Members have not received a copy each so far. According to Rule 38-M. such copies should reach the Members at least three days before, more particularly for the reason that it contains various reports on new matters. Unless it has been thoroughly read and studied, how can amendments be sent?]

Mr. President : *[Which copy are you referring to? The Draft Constitution placed before you by Dr. Ambedkar of 21st February, the copies of which were distributed, will be moved by him and the amendments on it will be proposed as amendments and they will be moved on behalf of the Drafting Committee.]

Pandit Thakur Dass Bhargava: *[The third point for submission on which I respectfully want to lay more emphasis is regarding the interpretation of Rule 38-O. In my opinion the view that the words "two clear days before the 'day' on which the constitution is to be considered" in Rule 38-O is that all the amendments should reach the office by Sunday before 5 P.M., is not correct for the reason that the Constitution shall not be taken up for consideration on the 9th November only; rather, its consideration will continue from day to day when the clauses will be discussed. There will be other dates further on after which it would be stated that the Constitution will be considered on those particular dates. That being the case, Members have the right to send in their amendments, two days before the date when the particular amendments shall be discussed.]

Mr. President : *[Let us not take a decision on this point at this stage.]

Pandit Thakur Dass Bhargava: *[I am aware that you want to give full opportunity to the Members for discussion and that their right of giving notice of amendments should remain intact. Every Member has confidence in the matter of the exercise of your discretion. But in my humble opinion, the question of discretion does not arise here, because according to my interpretation, every Member can send in amendments as a matter of right. This is also the intention of Rules 38-P and 38-Q. Your order that Members should send their amendments by 5 o'clock on Sunday goes in a way, *prima facie*, against the Members, which is not in order and should be reviewed. You may not decide it now, if you do not want to, though incidentally and in a way, the decision is there. In my humble opinion, if without reviewing the order, you extend the date, instead of 7th, to 10th and decide the question, when occasion arises, then nobody will have any grievance.]

Shri T. Channiah (Mysore State): On a point of order, Mr. President, Sir, most of the honourable Members who spoke previously know the English language very well. We are very sorry to bring it to your notice that most of the Members, especially Members coming from Madras, from Bengal, Bombay, Assam and many other places cannot understand Hindi or Hindustani. We have

* [ ] Translation of Hindustani speech.

to sit almost like dumb people. Mr. President, Sir, you are here to protect the interests of all the Members. I would, therefore, request you to see that all those members who know English and who are able to speak in English are made to speak in English.

MOTION *re.* DRAFT CONSTITUTION

Mr. President : I think we shall now proceed with the discussion. I call upon the Honourable Dr. Ambedkar to move his motion.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. President, Sir, I introduce the Draft Constitution as settled by the Drafting Committee and move that it be taken into consideration.

The Drafting Committee was appointed by a Resolution passed by the Constituent Assembly on August 29, 1947.

The Drafting Committee was in effect charged with the duty of preparing a Constitution in accordance with the decisions of the Constituent Assembly on the reports made by the various Committees appointed by it such as the Union Powers Committee, the Union Constitution Committee, the Provincial Constitution Committee and the Advisory Committee on Fundamental Rights, Minorities, Tribal Areas, etc. The Constituent Assembly had also directed that in certain matters the provisions contained in the Government of India Act, 1935, should be followed. Except on points which are referred to in my letter of the 21st February 1948 in which I have referred to the departures made and alternatives suggested by the Drafting Committee, I hope the Drafting Committee will be found to have faithfully carried out the directions given to it.

The Draft Constitution as it has emerged from the Drafting Committee is a formidable document. It contains 315 Articles and 8 Schedules. It must be admitted that the Constitution of no country could be found to be so bulky as the Draft Constitution. It would be difficult for those who have not been through it to realize its salient and special features.

The Draft Constitution has been before the public for eight months. During this long time friends, critics and adversaries have had more than sufficient time to express their reactions to the provisions contained in it. I dare say that some of them are based on misunderstanding and inadequate understanding of the Articles. But there the criticisms are and they have to be answered.

For both these reasons it is necessary that on a motion for consideration I should draw your attention to the special features of the Constitution and also meet the criticism that has been levelled against it.

Before I proceed to do so I would like to place on the table of the House Reports of three Committees appointed by the Constituent Assembly *(1) Report of the Committee on Chief Commissioners' Provinces (†)(2) Report of the Expert Committee on Financial Relations between the Union and the States, and (††)(3) Report of the Advisory Committee on Tribal Areas, which came too late to be considered by that Assembly though copies of them have been circulated to Members of the Assembly. As these reports and the recommendations made therein have been considered by the Drafting Committee it is only proper that the House should formally be placed in possession of them.

Turning to the main question. A student of Constitutional Law if a copy of a Constitution is placed in his hands is sure to ask two questions. Firstly what is the form of Government that is envisaged in the Constitution; and

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* Appendix A. † Appendix B. †† Appendix C (1 to 3).

[The Honourable Dr. B. R. Ambedkar]

secondly what in the form of the Constitution? For these are the two crucial matters which every Constitution has to deal with. I will begin with the first of the two questions.

In the Draft Constitution there is placed at the head of the Indian Union a functionary who is called the President of the Union. The title of this functionary reminds one of the President of the United States. But beyond identity of names there is nothing in common between the forms of Government prevalent in America and the form of Government proposed under the Draft Constitution. The American form of Government is called the Presidential system of Government. What the Draft Constitution proposes is the Parliamentary system. The two are fundamentally different.

Under the Presidential system of America, the President is the Chief head of the Executive. The administration is vested in him. Under the Draft Constitution the President occupies the same position as the King under the English Constitution. He is the head of the State but not of the Executive. He represents the Nation but does not rule the Nation. He is the symbol of the nation. His place in the administration is that of a ceremonial device on a seal by which the nation's decisions are made known. Under the American Constitution the President has under him Secretaries in charge of different Departments. In like manner the President of the Indian Union will have under him Ministers in charge of different Departments of administration. Here again there is a fundamental difference between the two. The President of the United States is not bound to accept any advice tendered to him by any of his Secretaries. The President of the Indian Union will be generally bound by the advice of his Ministers. He can do nothing contrary to their advice nor can he do anything without their advice. The President of the United States can dismiss any Secretary at any time. The President of the Indian Union has no power to do so so long as his Ministers command a majority in Parliament.

The Presidential system of America is based upon the separation of the Executive and the Legislature. So that the President and his Secretaries cannot be members of the Congress. The Draft Constitution does not recognise this doctrine. The Ministers under the Indian Union are members of Parliament. Only members of Parliament can become Ministers. Ministers have the same rights as other members of Parliament, namely, that they can sit in Parliament, take part in debates and vote in its proceedings. Both systems of Government are of course democratic and the choice between the two is not very easy. A democratic executive must satisfy two conditions—(1) It must be a stable executive and (2) it must be a responsible executive. Unfortunately it has not been possible so far to devise a system which can ensure both in equal degree. You can have a system which can give you more stability but less responsibility or you can have a system which gives you more responsibility but less stability. The American and the Swiss systems give more stability but less responsibility. The British system on the other hand gives you more responsibility but less stability. The reason for this is obvious. The American Executive is a non-Parliamentary Executive which means that it is not dependent for its existence upon a majority in the Congress, while the British system is a Parliamentary Executive which means that it is dependent upon a majority in Parliament. Being a non-Parliamentary Executive, the Congress of the United States cannot dismiss the Executive. A Parliamentary Government must resign the moment it loses the confidence of a majority of the members of Parliament. Looking at it from the point of view of responsibility, a non-Parliamentary Executive being independent of Parliament tends to be less responsible to the Legislature, while a Parliamentary Executive being more dependent upon a majority in Parliament become more responsible. The

Parliamentary system differs from a non-Parliamentary system in as much as the former is more responsible than the latter but they also differ as to the time and agency for assessment of their responsibility. Under the non-Parliamentary system, such as the one that exists in the U.S.A., the assessment of the responsibility of the Executive is periodic. It takes place once in two years. It is done by the Electorate. In England, where the Parliamentary system prevails, the assessment of responsibility of the Executive is both daily and periodic. The daily assessment is done by members of Parliament, through Questions, Resolutions, No-confidence motions, Adjournment motions and Debates on Addresses. Periodic assessment is done by the Electorate at the time of the election which may take place every five years or earlier. The Daily assessment of responsibility which is not available under the American system it is felt far more effective than the periodic assessment and far more necessary in a country like India. The Draft Constitution in recommending the Parliamentary system of Executive has preferred more responsibility to more stability.

So far I have explained the form of Government under the Draft Constitution. I will now turn to the other question, namely, the form of the Constitution.

Two principal forms of the Constitution are known to history—one is called Unitary and other Federal. The two essential characteristics of a Unitary Constitution are: (1) the supremacy of the Central Polity, and (2) the absence of subsidiary Sovereign polities. Contrariwise, a Federal Constitution is marked: (1) by the existence of a Central polity and subsidiary polities side by side, and (2) by each being sovereign in the field assigned to it. In other words, Federation means the establishment of a Dual Polity. The Draft Constitution is, Federal Constitution inasmuch as it establishes what may be called a Dual Polity. This Dual Polity under the proposed Constitution will consist of the Union at the Centre and the States at the periphery each endowed with sovereign powers to be exercised in the field assigned to them respectively by the Constitution. This Dual Polity resembles the American Constitution. The American polity is also a Dual polity, one of it is known as the Federal Government and the other States which correspond respectively to the Union Government and the States Government of the Draft Constitution. Under the American Constitution the Federal Government is not a mere league of the States nor are the States administrative units or agencies of the Federal Government. In the same way the Indian Constitution proposed in the Draft Constitution is not a league of States nor are the States administrative units or agencies of the Union Government. Here, however, the similarities between the Indian and the American Constitution come to an end. The differences that distinguish them are more fundamental and glaring than the similarities between the two.

The points of difference between the American Federation and the Indian Federation are mainly two. In the U.S.A. this dual polity is followed by a dual citizenship. In the U.S.A. there is a citizenship of the U.S.A. But there is also a citizenship of the State. No doubt the rigours of this double citizenship are much assuaged by the fourteenth amendment to the Constitution of the United States which prohibits the States from taking away the rights, privileges and immunities of the citizen of the United States. At the same time, as pointed out by Mr. William Anderson, in certain political matters, including the right to vote and to hold public office, States may and do discriminate in favour of their own citizens. This favoritism goes even farther in many cases. Thus to obtain employment in the service of a State or local Government one is in most places required to be a local resident or citizen. Similarly in the licensing of persons for the practice of such public professions as law and medicine, residence or citizenship in the State is frequently required; and in business where public regulation must necessarily be

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strict, as in the sale of liquor, and of stocks and bonds, similar requirements have been upheld.

Each State has also certain rights in its own domain that it holds for the special advantage of its own citizens. Thus wild game and fish in a sense belong to the State. It is customary for the States to charge higher hunting and fishing license fees to non-residents than to its own citizens. The States also charge non-residents higher tuition in State Colleges and Universities, and permit only residents to be admitted to their hospitals and asylums except in emergencies.

In short, there are a number of rights that a State can grant to its own citizens or residents that it may and does legally deny to non-residents, or grant to non-residents only on more difficult terms than those imposed on residents. These advantages, given to the citizen in his own State, constitute the special rights of State citizenship. Taken all together, they amount to a considerable difference in rights between citizens and non-citizens of the State. The transient and the temporary sojourner is everywhere under some special handicaps.

The proposed Indian Constitution is a dual polity with a single citizenship. There is only one citizenship for the whole of India. It is Indian citizenship. There is no State citizenship. Every Indian has the same rights of citizenship, no matter in what State he resides.

The dual polity of the proposed Indian Constitution differs from the dual polity of the U.S.A. in another respect. In the U.S.A. the Constitutions of the Federal and the States Governments are loosely connected. In describing the relationship between the Federal and State Governments in the U.S.A., Bryce has said:

"The Central or national Government and the State Governments may be compared to a large building and a set of smaller buildings standing on the same ground, yet distinct from each other."

Distinct they are, but how distinct are the State Governments in the U.S.A. from the Federal Government? Some idea of this distinctness may be obtained from the following facts:

1. Subject to the maintenance of the republican form of Government, each State in America is free to make its own Constitution.

2. The people of a State retain for ever in their hands, altogether independent of the National Government, the power of altering their Constitution.

To put it again in the words of Bryce:

"A State (in America) exists as a commonwealth by virtue of its own Constitution, and all State Authorities, legislative, executive and judicial are the creatures of, and subject to the Constitution."

This is not true of the proposed Indian Constitution. No States (at any rate those in Part I) have a right to frame its own Constitution. The Constitution of the Union and of the States is a single frame from which neither can get out and within which they must work.

So far I have drawn attention to the differences between the American Federation and the proposed Indian Federation. But there are some other special features of the proposed Indian Federation which mark it off not only from the American Federation but from all other Federations. All federal systems including the American are placed in a tight mould of federalism. No matter what the circumstances, it cannot change its form and shape. It can never be unitary. On the other hand the Draft Constitution can be both unitary as well as federal according to the requirements of time and circumstances. In normal times, it is framed to work as a federal system. But in times of war

it is so designed as to make it work as though it was a unitary system. Once the President issues a Proclamation which he is authorised to do under the Provisions of Article 275, the whole scene can become transformed and the State becomes a unitary state. The Union under the Proclamation can claim if it wants (1) the power to legislate upon any subject even though it may be in the State list, (2) the power to give directions to the States as to how they should exercise their executive authority in matters which are within their charge, (3) the power to vest authority for any purpose in any officer, and (4) the power to suspend the financial provisions of the Constitution. Such a power of converting itself into a unitary State no federation possesses. This is one point of difference between the Federation proposed in the Draft Constitution, and all other Federations we know of.

This is not the only difference between the proposed Indian Federation and other federations. Federalism is described as a weak if not an effete form of Government. There are two weaknesses from which Federation is alleged to suffer. One is rigidity and the other is legalism. That these faults are inherent in Federalism, there can be no dispute. A Federal Constitution cannot but be a written Constitution and a written Constitution must necessarily be a rigid Constitution. A Federal Constitution means division of Sovereignty by no less a sanction than that of the law of the Constitution between the Federal Government and the States, with two necessary consequences (1) that any invasion by the Federal Government in the field assigned to the States and *vice versa* is a breach of the Constitution and (2) such breach is a justiciable matter to be determined by the Judiciary only. This being the nature of federalism, a federal Constitution cannot escape the charge of legalism. These faults of a Federal Constitution have been found in a pronounced form in the Constitution of the United States of America.

Countries which have adopted Federalism at a later date have attempted to reduce the disadvantages following from the rigidity and legalism which are inherent therein. The example of Australia may well be referred to in this matter. The Australian Constitution has adopted the following means to make its federation less rigid:

(1) By conferring upon the Parliament of the Commonwealth large powers of concurrent Legislation and few powers of exclusive Legislation.

(2) By making some of the Articles of the Constitution of a temporary duration to remain in force only "until Parliament otherwise provides".

It is obvious that under the Australian Constitution, the Australian Parliament can do many things, which are not within the competence of the American Congress and for doing which the American Government will have to resort to the Supreme Court and depend upon its ability, ingenuity and willingness to invent a doctrine to justify it the exercise of authority.

In assuaging the rigour of rigidity and legalism the Draft Constitution follows the Australian plan on a far more extensive scale than has been done in Australia. Like the Australian Constitution, it has a long list of subjects for concurrent powers of legislation. Under the Australian Constitution, concurrent subjects are 39. Under the Draft Constitution they are 37. Following the Australian Constitution there are as many as six Articles in the Draft Constitution, where the provision are of a temporary duration and which could be replaced by Parliament at any time by provisions suitable for the occasion. The biggest advance made by the Draft Constitution over the Australian Constitution is in

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the matter of exclusive powers of legislation vested in Parliament. While the exclusive authority of the Australian Parliament to legislate extends only to about 3 matters, the authority of the Indian Parliament as proposed in the Draft Constitution will extend to 91 matters. In this way the Draft Constitution has secured the greatest possible elasticity in its federalism which is supposed to be rigid by nature.

It is not enough to say that the Draft Constitution follows the Australian Constitution or follows it on a more extensive scale. What is to be noted is that it has added new ways of overcoming the rigidity and legalism inherent in federalism which are special to it and which are not to be found elsewhere.

First is the power given to Parliament to legislate on exclusively provincial subjects in normal times. I refer to Articles 226, 227 and 229. Under Article 226 Parliament can legislate when a subject becomes a matter of national concern as distinguished from purely Provincial concern, though the subject is in the State list, provided a solution is passed by the Upper Chamber by 2/3rd majority in favour of such exercise of the power by the Centre. Article 227 gives the similar power to Parliament in a national emergency. Under Article 229 Parliament can exercise the same power if Provinces consent to such exercise. Though the last provision also exists in the Australian Constitution the first two are a special feature of the Draft Constitution.

The second means adopted to avoid rigidity and legalism is the provision for facility with which the Constitution could be amended. The provisions of the Constitution relating to the amendment of the Constitution divide the Articles of the Constitution into two groups. In the one group are placed Articles relating to (a) the distribution of legislative powers between the Centre and the States, (b) the representation of the States in Parliament, and (c) the powers of the Courts. All other Articles are placed in another group. Articles placed in the second group cover a very large part of the Constitution and can be amended by Parliament by a double majority, namely, a majority of not less than two thirds of the members of each House present and voting and by a majority of the total membership of each House. The amendment of these Articles does not require ratification by the States. It is only in those Articles which are placed in group one that an additional safeguard of ratification by the States is introduced.

One can therefore safely say that the Indian Federation will not suffer from the faults of rigidity or legalism. Its distinguishing feature is that it is a flexible federation.

There is another special feature of the proposed Indian Federation which distinguishes it from other federations. A Federation being a dual polity based on divided authority with separate legislative, executive and judicial powers for each of the two polities is bound to produce diversity in laws, in administration and in judicial protection. Upto a certain point this diversity does not matter. It may be welcomed as being an attempt to accommodate the powers of Government to local needs and local circumstances. But this very diversity when it goes beyond a certain point is capable of producing chaos and has produced chaos in many federal States. One has only to imagine twenty different laws—if we have twenty States in the Union—of marriage, of divorce, of inheritance of property, family relations, contracts, torts, crimes, weights and measures, of bills and cheques, banking and commerce, of procedures for obtaining justice and in the standards and methods of administration. Such a state of affairs not only weakens the State but becomes intolerant to the citizen who moves from State to State only to find that what is lawful in one State is not lawful in another. The Draft Constitution has sought to forge means and methods whereby India will have Federation and at the same time

will have uniformity in all the basic matters which are essential to maintain the unity of the country. The means adopted by the Draft Constitution are three

(1) a single judiciary,

(2) uniformity in fundamental laws, civil and criminal, and

(3) a common All-India Civil Service to man important posts.

A dual judiciary, a duality of legal codes and a duality of civil services, as I said, are the logical consequences of a dual polity which is inherent in a Federation. In the U.S.A. the Federal Judiciary and the State Judiciary are separate and independent of each other. The Indian Federation though a Dual Polity has no Dual Judiciary at all. The High Courts and the Supreme Court form one single integrated Judiciary having jurisdiction and providing remedies in all cases arising under the constitutional law, the civil law or the criminal law. This is done to eliminate all diversity in all remedial procedure. Canada is the only country which furnishes a close parallel. The Australian system is only an approximation.

Care is taken to eliminate all diversity from laws which are at the basis of civic and corporate life. The great Codes of Civil & Criminal Laws, such as the Civil Procedure Code, Penal Code, the Criminal Procedure Code, the Evidence Act, Transfer of Property Act, Laws of Marriage Divorce, and Inheritance, are either placed in the Concurrent List so that the necessary uniformity can always be preserved without impairing the federal system.

The dual polity which is inherent in a federal system as I said is followed in all federations by a dual service. In all Federations there is a Federal Civil Service and a State Civil Service. The Indian Federation though a Dual Polity will have a Dual Service but with one exception. It is recognized that in every country there are certain posts in its administrative set up which might be called strategic from the point of view of maintaining the standard of administration. It may not be easy to spot such posts in a large and complicated machinery of administration. But there can be no doubt that the standard of administration depends upon the calibre of the Civil Servants who are appointed to these strategic posts. Fortunately for us we have inherited from the past system of administration which is common to the whole of the country and we know what are these strategic posts. The Constitution provides that without depriving the States of their right to form their own Civil Services there shall be an All India Service recruited on an All-India basis with common qualifications, with uniform scale of pay and the members of which alone could be appointed to these strategic posts throughout the Union.

Such are the special features of the proposed Federation. I will now turn to what the critics have had to say about it.

It is said that there is nothing new in the Draft Constitution, that about half of it has been copied from the Government of India Act of 1935 and that the rest of it has been borrowed from the Constitutions of other countries. Very little of it can claim originality.

One likes to ask whether there can be anything new in a Constitution framed at this hour in the history of the world. More than hundred years have rolled over when the first written Constitution was drafted. It has been followed by many countries reducing their Constitutions to writing. What the scope of a Constitution should be has long been settled. Similarly what are the fundamentals of a Constitution are recognized all over the world. Given these facts, all Constitutions in their main provisions must look similar. The only new things, if there can be any, in a Constitution framed so late in the day are the variations made to remove the faults and to accommodate it to the needs of the country. The charge of producing a blind copy of the Constitutions of other countries is based, I am sure, on an inadequate study

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of the Constitution. I have shown what is new in the Draft Constitution and I am sure that those who have studied other Constitutions and who are prepared to consider the matter dispassionately will agree that the Drafting Committee in performing its duty has not been guilty of such blind and slavish imitation as it is represented to be.

As to the accusation that the Draft Constitution has produced a good part of the provisions of the Government of India Act, 1935, I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. Nobody holds any patent rights in the fundamental ideas of a Constitution. What I am sorry about is that the provisions taken from the Government of India Act, 1935, relate mostly to the details of administration. I agree that administrative details should have no place in the Constitution. I wish very much that the Drafting Committee could see its way to avoid their inclusion in the Constitution. But this is to be said on the necessity which justifies their inclusion. Grote, the historian of Greece, has said that:

> "The diffusion of constitutional morality, not merely among the majority of any community but throughout the whole, is the indispensable condition of government at once free and peaceable; since even any powerful and obstinate minority may render the working of a free institution impracticable, without being strong enough to conquer ascendency for themselves."

By constitutional morality Grote meant "a paramount reverence for the forms of the Constitution, enforcing obedience to authority acting under and within these forms yet combined with the habit of open speech, of action subject only to definite legal control, and unrestrain edcen sure of those very authorities as to all their public acts combined too with a perfect confidence in the bosom of every citizen amidst the bitterness of party contest that the forms of the Constitution will not be less sacred in the eyes of his opponents than in his own." (*Hear, hear.*)

While everybody recognizes the necessity of the diffusion of Constitutional morality for the peaceful working of a democratic Constitution, there are two things interconnected with it which are not, unfortunately, generally recognized. One is that the form of administration has a close connection with the form of the Constitution. The form of the administration must be appropriate to and in the same sense as the form of the Constitution. The other is that it is perfectly possible to pervert the Constitution, without changing its form by merely changing the form of the administration and to make it inconsistent and opposed to the spirit of the Constitution. It follows that it is only where people are saturated with Constitutional morality such as the one described by Grote the historian that one can take the risk of omitting from the Constitution details of administration and leaving it for the Legislature to prescribe them. The question is, can we presume such adiffusion of Constitutional morality? Constitution almorality is not a natural sentiment. It has to be cultivated. We must realize that our people have yet to learn it. Democracy in India is only a top-dressing on an Indian soil, which is essentially undemocratic.

In these circumstances it is wiser not to trust the Legislature to prescribe forms of administration. This is the justification for incorporating them in the Constitution.

Another criticism against the Draft Constitution is that no part of it represents the ancient polity of India. It is said that the new Constitution should have been drafted on the ancient Hindu model of a State and that instead of incorporating Western theories the new Constitution should have been raised and built upon village Panchayats and District Panchayats. There are others

who have taken a more extreme view. They do not want any Central or Provincial Governments. They just want India to contain so many village Governments. The love of the intellectual Indians for the village community is of course infinite if not pathetic *(laughter)*. It is largely due to the fulsome praise bestowed upon it by Metcalfe who described them as little republics having nearly everything that they want within themselves, and almost independent of any foreign relations. The existence of these village communities each one forming a separate little State in itself has according to Metcalfe contributed more than any other cause to the preservation of the people of India, through all the revolutions and changes which they have suffered, and is in a high degree conducive to their happiness and to the enjoyment of a great portion of the freedom and independence. No doubt the village communities have lasted where nothing else lasts. But those who take pride in the village communities do not care to consider what little part they have played in the affairs and the destiny of the country; and why? Their part in the destiny of the country has been well described by Metcalfe himself who says:

> "Dynasty after dynasty tumbles down. Revolution succeeds to revolution. Hindoo, Pathan, Mogul, Maratha, Sikh, English are all masters in turn but the village communities remain the same. In times of trouble they arm and fortify themselves. A hostile army passes through the country. The village communities collect their little cattle within their walls, and let the enemy pass unprovoked."

Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? That they have survived through all viscisitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low, on a selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn Provincialism and Communalism should come forward as champions of the village. What is the village but a sink of localism, a den of ignorance, narrow-mindedness and communalism? I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit.

The Draft Constitution is also criticised because of the safeguards it provides for minorities. In this, the Drafting Committee has no responsibility. It follows the decisions of the Constituent Assembly. Speaking for myself, I have no doubt that the Constituent Assembly has done wisely in providing such safeguards for minorities as it has done. In this country both the minorities and the majorities have followed a wrong path. It is wrong for the majority to deny the existence of minorities. It is equally wrong for the minorities to perpetuate themselves. A solution must be found which will serve a double purpose. It must recognize the existence of the minorities to start with. It must also be such that it will enable majorities and minorities to merge someday into one. The solution proposed by the Constituent Assembly is to be welcomed because it is a solution which serves this twofold purpose. To diehards who have developed a kind of fanaticism against minority protection I would like to say two things. One is that minorities are an explosive force which, if it erupts, can blow up the whole fabric of the State. The history of Europe bears ample and appalling testimony to this fact. The other is that the minorities in India have agreed to place their existence in the hands of the majority. In the history of negotiations for preventing the partition of Ireland, Redmond said to Carson "ask for any safeguard you like for the Protestant minority but let us have a United Ireland." Carson's reply was "Damn your safeguards, we don't want to be ruled by you." No minority in India has taken this stand. They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority. It is for the majority to realize its duty not to discriminate against minorities. Whether the minorities will continue or will vanish must depend upon this habit of the majority. The moment the majority loses the habit of discriminating against the minority, the minorities can have no ground to exist. They will vanish.

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The most criticized part of the Draft Constitution is that which relates to Fundamental Rights. It is said that Article 13 which defines fundamental rights is riddled with so many exceptions that the exceptions have eaten up the rights altogether. It is condemned as a kind of deception. In the opinion of the critics fundamental rights are not fundamental rights unless they are also absolute rights. The critics rely on the Constitution of the United States and to the Bill of Rights embodied in the first ten Amendments to that Constitution in support of their contention. It is said that the fundamental rights in the American Bill of Rights are real because they are not subjected to limitations or exceptions.

I am sorry to say that the whole of the criticism about fundamental rights is based upon a misconception. In the first place, the criticism in so far as it seeks to distinguish fundamental rights from non-fundamental rights is not sound. It is incorrect to say that fundamental rights are absolute while non-fundamental rights are not absolute. The real distinction between the two is that non-fundamental rights are created by agreement between parties while fundamental rights are the gift of the law. Because fundamental rights are the gift of the State it does not follow that the State cannot qualify them.

In the second place, it is wrong to say that fundamental rights in America are absolute. The difference between the position under the American Constitution and the Draft Constitution is one of form and not of substance. That the fundamental rights in America are not absolute rights is beyond dispute. In support of every exception to the fundamental rights set out in the Draft Constitution one can refer to at least one judgment of the United States Supreme Court. It would be sufficient to quote one such judgment of the Supreme Court in justification of the limitation on the right of free speech contained in Article 13 of the Draft Constitution. In *Gitlow Vs. New York* in which the issue was the constitutionality of a New York "criminal anarchy" law which purported to punish utterances calculated to bring about violent change, the Supreme Court said:

> "It is a fundamental principle, long established, that the freedom of speech and of the press, which is secured by the Constitution, does not confer an absolute right to speak or publish, without responsibility, whatever one may choose, or an unrestricted and unbridled license that gives immunity for every possible use of language and prevents the punishment of those who abuse this freedom."

It is therefore wrong to say that the fundamental rights in America are absolute, while those in the Draft Constitution are not.

It is argued that if any fundamental rights require qualification, it is for the Constitution itself to qualify them as is done in the Constitution of the United States and where it does not do so it should be left to be determined by the Judiciary upon a consideration of all the relevant considerations. All this, I am sorry to say, is a complete misrepresentation if not a misunderstanding of the American Constitution. The American Constitution does nothing of the kind. Except in one matter, namely, the right of assembly, the American Constitution does not itself impose any limitations upon the fundamental rights guaranteed to the American citizens. Nor is it correct to say that the American Constitution leaves it to the judiciary to impose limitations on fundamental rights. The right to impose limitations belongs to the Congress. The real position is different from what is assumed by the critics. In America, the fundamental rights as enacted by the Constitution were no doubt absolute. Congress, however, soon found that it was absolutely essential to qualify these fundamental rights by limitations. When the question arose as to the constitutionality of these limitations before the Supreme Court, it was contended that the Constitution gave no power to the United States Congress to impose such limitation, the Supreme Court invented the doctrine of police power and refuted the advocates of absolute

fundamental rights by the argument that every State has inherent in its police power which is not required to be conferred on it expressly by the Constitution. To use the language of the Supreme Court in the case I have already referred to, it said:

> "That a State in the exercise of its police power may punish those who abuse this freedom by utterances inimical to the public welfare, tending to corrupt public morals, incite to crime or disturb the public peace, is not open to question. . . . ."

What the Draft Constitution has done is that instead of formulating fundamental rights in absolute terms and depending upon our Supreme Court to come to the rescue of Parliament by inventing the doctrine of police power, it permits the State directly to impose limitations upon the fundamental rights. There is really no difference in the result. What one does directly the other does indirectly. In both cases, the fundamental rights are not absolute.

In the Draft Constitution the Fundamental Rights are followed by what are called "Directive Principles". It is a novel feature in a Constitution framed for Parliamentary Democracy. The only other constitution framed for Parliamentary Democracy which embodies such principles is that of the Irish Free State. These Directive Principles have also come up for criticism. It is said that they are only pious declarations. They have no binding force. This criticism is of course superfluous. The Constitution itself says so in so many words.

If it is said that the Directive Principles have no legal force behind them, I am prepared to admit it. But I am not prepared to admit that they have no sort of binding force at all. Nor am I prepared to concede that they are useless because they have no binding force in law.

The Directive Principles are like the Instrument of Instructions which were issued to the Governor-General and to the Governors of the Colonies and to those of India by the British Government under the 1935 Act. Under the Draft Constitution it is proposed to issue such instruments to the President and to the Governors. The texts of these Instruments of Instructions will be found in Schedule IV of the Constitution. What are called Directive Principles is merely another name for Instrument of Instructions. The only difference is that they are instructions to the Legislature and the Executive. Such a thing is to my mind to be welcomed. Wherever there is a grant of power in general terms for peace, order and good government, it is necessary that it should be accompanied by instructions regulating its exercise.

The inclusion of such instructions in a Constitution such as is proposed in the Draft becomes justifiable for another reason. The Draft Constitution as framed only provides a machinery for the government of the country. It is not a contrivance to install any particular party in power as has been done in some countries. Who should be in power is left to be determined by the people, as it must be, if the system is to satisfy the tests of democracy. But whoever captures power will not be free to do what he likes with it. In the exercise of it, he will have to respect these instruments of instructions which are called Directive Principles. He cannot ignore them. He may not have to answer for their breach in a Court of Law. But he will certainly have to answer for them before the electorate at election time. What great value these directive principles possess will be realized better when the forces of right contrive to capture power.

That it has no binding force is no argument against their inclusion in the Constitution. There may be a difference of opinion as to the exact place they should be given in the Constitution. I agree that it is somewhat odd that provisions which do not carry positive obligations should be placed in the midst of provisions which do carry positive obligations. In my judgment their proper place is in Schedules III A & IV which contain Instrument of Instructions to

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the President and the Governors. For, as I have said, they are really Instruments of Instructions to the Executive and the Legislatures as to how they should exercise their powers. But that is only a matter of arrangement.

Some critics have said that the Centre is too strong. Others have said that it must be made stronger. The Draft Constitution has struck a balance. However much you may deny powers to the Centre, it is difficult to prevent the Centre from becoming strong. Conditions in modern world are such that centralization of powers is inevitable. One has only to consider the growth of the Federal Government in the U.S.A. which, notwithstanding the very limited powers given to it by the Constitution, has out-grown its former self and has overshadowed and eclipsed the State Governments. This is due to modern conditions. The same conditions are sure to operate on the Government of India and nothing that one can do will help to prevent it from being strong. On the other hand, we must resist the tendency to make it stronger. It cannot chew more than it can digest. Its strength must be commensurate with its weight. It would be a folly to make it so strong that it may fall by its own weight.

The Draft Constitution is criticized for having one sort of constitutional relations between the Centre and the Provinces and another sort of constitutional relations between the Centre and the Indian States. The Indian States are not bound to accept the whole list of subjects included in the Union List but only those which come under Defence, Foreign Affairs and Communications. They are not bound to accept subjects included in the Concurrent List. They are not bound to accept the State List contained in the Draft Constitution. They are free to create their own Constituent Assemblies and to frame their own constitutions. All this, of course, is very unfortunate and, I submit quite indefensible. This disparity may even prove dangerous to the efficiency of the State. So long as the disparity exists, the Centre's authority over all-India matters may lose its efficacy. For, power is no power if it cannot be exercised in all cases and in all places. In a situation such as may be created by war, such limitations on the exercise of vital powers in some areas may bring the whole life of the State in complete jeopardy. What is worse is that the Indian States under the Draft Constitution are permitted to maintain their own armies. I regard this as a most retrograde and harmful provision which may lead to the break-up of the unity of India and the overthrow of the Central Government. The Drafting Committee, if I am not misrepresenting its mind, was not at all happy over this matter. They wished very much that there was uniformity between the Provinces and the Indian States in their constitutional relationship with the Centre. Unfortunately, they could do nothing to improve matters. They were bound by the decisions of the Constituent Assembly, and the Constituent Assembly in its turn was bound by the agreement arrived at between the two negotiating Committees.

But we may take courage from what happened in Germany. The German Empire as founded by Bismark in 1870 was a composite State, consisting of 25 units. Of these 25 units, 22 were monarchical States and 3 were republican city States. This distinction, as we all know, disappeared in the course of time and Germany became one land with one people living under one Constitution. The process of the amalgamation of the Indian States is going to be much quicker than it has been in Germany. On the 15th August 1947 we had 600 Indian States in existence. Today by the integration of the Indian States with Indian Provinces or merger among themselves or by the Centre having taken them as Centrally Administered Areas there have remained some 20/30 States as viable States. This is a very rapid process and progress. I appeal to those States that remain to fall in line with the Indian Provinces and to become full units of the Indian Union on the same terms as the Indian Provinces. They

will thereby give the Indian Union the strength it needs. They will save themselves the bother of starting their own Constituent Assemblies and drafting their own separate Constitution and they will lose nothing that is of value to them. I feel hopeful that my appeal will not go in vain and that before the Constitution is passed, we will be able to wipe off the differences between the Provinces and the Indian States.

Some critics have taken objection to the description of India in Article 1 of the Draft Constitution as a Union of States. It is said that the correct phraseology should be a Federation of States. It is true that South Africa which is a unitary State is described as a Union. But Canada which is a Federation is also called a Union. Thus the description of India as a Union, though its constitution is Federal, does no violence to usage. But what is important is that the use of the word Union is deliberate. I do not know why the word 'Union' was used in the Canadian Constitution. But I can tell you why the Drafting Committee has used it. The Drafting Committee wanted to make it clear that though India was to be a federation, the Federation was not the result of an agreement by the States to join in a Federation and that the Federation not being the result of an agreement no State has the right to secede from it. The Federation is a Union because it is indestructible. Though the country and the people may be divided into different States for convenience of administration the country is one integral whole, its people a single people living under a single *imperium* derived from a single source. The Americans had to wage a civil war to establish that the States have no right of secession and that their Federation was indestructible. The Drafting Committee thought that it was better to make it clear at the outset rather than to leave it to speculation or to dispute.

The provisions relating to amendment of the Constitution have come in for a virulent attack at the hands of the critics of the Draft Constitution. It is said that the provisions contained in the Draft make amendment difficult. It is proposed that the Constitution should be amendable by a simple majority at least for some years. The argument is subtle and ingenious. It is said that this Constituent Assembly is not elected on adult suffrage while the future Parliament will be elected on adult suffrage and yet the former has been given the right to pass the Constitution by a simple majority while the latter has been denied the same right. It is paraded as one of the absurdities of the Draft Constitution. I must repudiate the charge because it is without foundation. To know how simple are the provisions of the Draft Constitution in respect of amending the Constitution one has only to study the provisions for amendment contained in the American and Australian Constitutions. Compared to them those contained in the Draft Constitution will be found to be the simplest. The Draft Constitution has eliminated the elaborate and difficult procedures such as a decision by a convention or a referendum. The powers of amendment are left with the Legislatures Central and Provincial. It is only for amendments of specific matters—and they are only few—that the ratification of the State legislatures is required. All other Articles of the Constitution are left to be amended by Parliament. The only limitation is that it shall be done by a majority of not less than two-thirds of the members of each House present and voting and a majority of the total membership of each House. It is difficult to conceive a simpler method of amending the Constitution.

What is said to be the absurdity of the amending provisions is founded upon a misconception of the position of the Constituent Assembly and of the future Parliament elected under the Constitution. The Constituent Assembly in making a Constitution has no partisan motive. Beyond securing a good and workable constitution it has no axe to grind. In considering the Articles of the Constitution it has no eye on getting through a particular measure. The future Parliament if it met as a Constituent Assembly, its members will be acting as partisans seeking to carry amendments to the Constitution to facilitate the passing of party measures which they have failed to get through Parliament by reason of some

[The Honourable Dr. B. R. Ambedkar]

Article of the Constitution which has acted as an obstacle in their way. Parliament will have an axe to grind while the Constituent Assembly has none. That is the difference between the Constituent Assembly and the future Parliament. That explains why the Constituent Assembly though elected on limited franchise can be trusted to pass the Constitution by simple majority and why the Parliament though elected on adult suffrage cannot be trusted with the same power to amend it.

I believe I have dealt with all the adverse criticisms that have been levelled against the Draft Constitution as settled by the Drafting Committee. I don't think that I have left out any important comment or criticism that has been made during the last eight months during which the Constitution has been before the public. It is for the Constituent Assembly to decide whether they will accept the Constitution as settled by the Drafting Committee or whether they shall alter it before passing it.

But this I would like to say. The Constitution has been discussed in some of the Provincial Assemblies of India. It was discussed in Bombay, C.P., West Bengal, Bihar, Madras and East Punjab. It is true that in some Provincial Assemblies serious objections were taken to the financial provisions of the constitution and in Madras to Article 226. But excepting this, in no Provincial Assembly was any serious objection taken to the Articles of the Constitution. No Constitution is perfect and the Drafting Committee itself is suggesting certain amendments to improve the Draft Constitution. But the debates in the Provincial Assemblies give me courage to say that the Constitution as settled by the Drafting Committee is good enough to make in this country a start with. I feel that it is workable, it is flexible and it is strong enough to hold the country together both in peace time and in war time. Indeed, if I may say so, if things go wrong under the new Constitution. The reason will not be that we had a bad Constitution. What we will have to say is, that Man was vile. Sir, I move.

Mr. President : Maulana Hasrat Mohani has given notice of an amendment. It was given at half-past Eleven this morning. I will allow him to move it, particularly because it will the effect, if it is lost, of blocking another motion of which I have got notice. Maulana Sahib, will you kindly move your amendment?

Maulana Hasrat Mohani : *[Sir, the amendment, of which I have given notice, is to the effect that the present Constitution Assembly is not competent and there are three reasons why I do not regard it as competent. The first and the most important reason is .....]

Shri B. Das (Orissa : General): Mr. President, Sir, will Maulana Sahib please read out the amendment first?

Mr. President : I will read out the amendment. The amendment is this:

"That the Consideration of the Draft Constitution of India be postponed till the election of a fresh and competent Constituent Assembly on the basis of joint electorate and the formation of political rather than communal parties in India."

That is the amendment.

Shri B. Das: May I rise on a point of order, Sir? My point of order, is that Maulana Sahib cannot move his negative amendment after .....

Mr. President : Won't you allow him to move it ?

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* [ ] Translation of Hindustani speech.

Shri B. Das : He has just spoken in Hindustani, the purport of which is that he has moved his amendment. This is contrary to the practice of this House. I think it is out of order and it should not be allowed.

Mr. President : I think I had better allow the Maulana Sahib to move the amendment. Then, you may take the point of order.

Maulana Hasrat Mohani : *[I was telling the reason why I do not regard this Constituent Assembly as a competent body. Firstly, because all over the world wherever a Constituent Assembly has been set up, it has been done as an outcome of revolution. Revolution does not necessarily mean an armed revolution. It only means that, when the prevailing system of Government has come to an end and another is intended to be set up in its place, a Constituent Assembly has been invariably called to frame and pass a constitution in the light of new conditions. If the previous form of Government were to continue then there was no need of a Constituent Assembly. Look at our new constitution drafted by Dr. Ambedkar. There is nothing new in it. He has mostly copied out either the Government of India Act of 1935 or, as admitted by himself, has drawn from the constitutions of other countries. A bit from here and a bit from there—it is a Pandora's Box. This is what has been produced by our friend Dr. Ambedkar! My biggest complaint on this account is that if for the purpose of drafting a constitution he had to copy out the constitutions of other countries, then why did he not embody the latest and the best constitution? How was it that he looked up to the constitutions of Australia, Canada, America, and England, but the constitution of the Soviet Union did not catch his eye? I have jotted down all the points he has made in his speech. This is not the time to reply them in detail, but this much I can say that he has retained all the bad points that he could lay his hands upon. He has observed that there should be no rigidity and legalism, but has he at any place said that a Unitary System of Government should be established? At one place he mentioned that he could not provide for the village Panchayats. If he had kept the Soviet Constitution in view, there would have been no difficulty in his way. I claim it and I challenge him on that point. For example, he has said that unless there is a unitary type of Government and a powerful Centre, nothing can be done. Such talk is beside the point. He does not know that it is so in the Soviet Constitution. What he has done is to allocate some subjects to Provinces, some to the Centre and some have been put in the concurrent list. In the Soviet Constitution every constituent state has been made a permanent republic; and to win its confidence every component unit has been given control over the defence, foreign relations and communications. What has been the result? He says that it would be detrimental, but there the Soviet Government have gained the confidence of their component states. The result has been that all parts of the Soviet Union — considered from the point of view of population they are all Muslim republics — have helped their utmost in the last war. People of Caucasia and of every war-ravaged region have stood whole heartedly by the Soviet Union. Cossacks and others who rendered help all belonged to the Union. Thus his observation is unjustified. He is not taking the people into his confidence, and says that all should merge.]

Pandit Balkrishna Sharma : May I rise to a point of order? The revered Maulana Sahib is discussing the merits of the Constitution whereas the proposal that is put forward before us is that we must not consider this Constitution. The discussion of the merits of the Constitution cannot be brought before the House when we are to consider only the question of postponement of the discussion.

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* [ ] Translation of Hindustani speech.

Mr. President : I thought it would save time if you left him alone.

Maulana Hasrat Mohani : *[I repeat what I have already said, that the reason why this House is not competent, is that you have consulted all the constitutions of the world; but you have not cared to see the latest and the best constitutions. The second point arises, what was the basis of the election of our Constituent Assembly? It was on communal basis. Muslims had elected Muslims and Hindus had voted for the Hindus, but the States were not represented. What was the position at the time of the first meeting of the Constituent Assembly? On your own admission there were three parties, namely, the Congress, the Muslim League and the States; but up to that time the States had not come in. No member of the Muslim League had taken any part. The result has been that the constitution that has been framed has been forged by one party alone. How can you enforce it on others? I mean to say that no reliance can be placed by us as the Constitution has been framed by one party alone. In the situation that has how arisen we also find the same, namely that there is only one party. It is like this: the Muslim League is finished, it has dissolved itself and all the States have merged themselves in the Indian Union and now only the Indian Government, namely one party, has remained in the field. That is why we have to form political parties so that your difficulties may come to an end.]

Shri Satyanarayan Sinha (Bihar : General): *[Did you find out any better solution?]

Maulana Hasrat Mohani : *[I am coming to that, Dr. Ambedkar has just said that the majority party should be considerate towards the Minority party. I say: we do not want them. You have provided in the constitution that 14 per cent of the seats should be reserved for the Muslims. You still consider yourself 86 per cent and Muslims to be 14 per cent. So long as you have this communalism, nothing can be done. Why do you say that Muslims are in a Minority. So long as you depict them in communal colours Muslims shall remain a Minority. When we come as members of a political party or as members of the Independent Communist party or as Socialists and then form a coalition party, then as a whole they will be arrayed against the rest.

You say that a long time has elapsed that many things have happened and that you have worked so hard. Mr. President, I would recall that when Pandit Jawahar Lal Nehru had presented the Draft Constitution, I had then raised an objection and he had advised me to leave alone a primary matter. I had thereupon pointed out to him that it would be absurd to leave aside a point which is to be settled first. I had also pointed out that by doing so he would not be taking any strong and firm stand but would be stuffing irrelevant matter in all directions. I had also enquired what he would do if questions were raised on these issues, if without taking any decision, he started framing the Constitution. It is a futility; we should see what type of Constitution is required. We want to make a picture, but if that picture is not painted correctly, then it cannot be termed a picture. You will say that you have worked hard and that quite a long time has elapsed. My answer would be that there is no difficulty about it, neither was there any risk. I had protested at that time and I was glad that the Honourable President had stated that the point would be considered and it was on that understanding that we had discussed the resolution. You know that the same thing has happened in Pakistan as well. Mr. Jinnah had said that so long as the Constituent Assembly was not elected, the Constitution could not be passed. This is the reason why I am telling you that so long as the Constituent Assembly is not elected on non-communal basis, you have no right to get a constitution passed by this Constituent Assembly. No matter receives any consideration from you, because you are inflated with the idea that you are in a majority and that whatever you like will be passed. Do not

* [ ] Translation of Hindustani speech.

imagine that no blame will come upon you. I am alone and I am saying all I can say. You may not agree. In reality you are doing all that the British Government had been doing. After sometime they used to give us pensions and used to ask us to stay at home. But why should we do so?

I would like to ask you what you are doing in Hyderabad. You say that a Constituent Assembly will be set up which would frame a constitution. You have accepted this principle for Hyderabad. Why don't you do it here? Obviously all this is being done on communal lines in which truth and justice have no place.

If he says that he cannot do that, he has no power to elect a new Constituent Assembly on the basis of joint electorate and that that would be done after the constitution has been framed, then I repeat what you have said, that 'legalism' and 'rigidity' should be cast aside. I ask him whether he can set up a Constituent Assembly in Hyderabad without the Nizam's fireman. But here we set up an electorate for the Constituent Assembly as we felt the need for it; so it is incorrect to say that we can not do it. "Where there is a will, there is a way." If you are in earnest to be just to the country and if you want to treat every one equally, then I give you a warning that your endeavour to assimilate all into one whole, to build a paramount Indian power, will bring disaster. The latest example is that of Aurangazeb the Emperor. After conquering the whole of India he annexed the two Southern States of Bijapur and Golcanda with the intention of founding aunitary Moghul Empire. What was the result? They say Aurangazeb lost his kingdom because of his bigotry but I say it was lost because of his imperialistic ideas. If he had not done that, he would not have lost a kingdom. Do not think it is easy to form a single unitary Government by coercing each and all into your fold. That can not last. You should hold fresh elections on non-communal basis, on the basis of joint electorates, and then whatever constitution you frame will be acceptable to us. We regard the Constitution framed by you worthy of being consigned to the waste paper basket.]

Shri B. Das : I wish to point out that under Rule 31 sub-clause (2) the motion for adjournment on the motion moved by the Honourable Dr. B.R. Ambedkar for the consideration of the Draft Constitution of India should not have been allowed by the Chair.

Mr. President : I have taken this under Rule 25, Clause (5), sub-clause (b) as a motion for adjournment of consideration of a motion which is under discussion.

Shri B. Das : But he is wanting a fresh election to take place first in the country. That is a negation of the whole idea.

Mr. President : I have liberally construed the rule for the Honourable Member and I have taken it, as I have said, under Rule 25, Clause (5), sub-clause (b).

Begum Aizaz Rasul (United Provinces : Muslim): Sir, before we adjourn for the day, may I know how many days the Chair proposes to allow for the general discussion on Dr. Ambedkar's motion?

Mr. President : As at present advised, it is hoped to conclude the discussion tomorrow. I will limit the time of each speaker and if I find that there is a considerable opinion in favour of further discussion, more time may be given.

The Constituent Assembly then adjourned till Ten of the Clock on Friday the 5th November 1948.

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* [ ] Translation of Hindustani speech.

APPENDIX A

CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,
New Delhi, the 21*st October* 1947.

To

THE PRESIDENT,
CONSTITUENT ASSEMBLY OF INDIA,
NEW DELHI.

DEAR SIR,

We, the members of the Committee appointed by you in accordance with the motion adopted by the Constituent Assembly on the 30th July, 1947, for the purpose of recommending constitutional changes in the five Centrally administered areas, *viz.,* Panth Piploda, Andaman and Nicobar Islands, Coorg, Ajmer-Merwara and Delhi, submit this our report and the annexure thereto. We have adopted broadly the principles of responsible government as the basis of the constitution for the three last mentioned provinces. We have, however, made some modifications in the provisions adopted by the Assembly in respect of the Major Provinces. Before formulating our proposals we fully considered the position of these provinces with respect to their geography, financial condition and the working of the existing system of government in these areas.

2. Panth Piploda is a small tract of territory consisting of only $10^1/_2$ villages situated in Malwa in the Central India Agency. In view of its small size and isolated position we have recommended that it should form part of the province of Ajmer-Merwara. This step was also suggested by some influential citizens of Panth Piploda. As regards the group of islands in the Bay of Bengal known as the Andaman and Nicobar Islands which have ceased to be penal settlements, we recommend that they should continue to be administered by the Government of India as at present with such adjustments in their administrative machinery as may be deemed necessary.

3. Before recommending any constitutional changes for the three Chief Commissioners' Provinces of Coorg, Ajmer-Merwara and Delhi which we propose to designate as Lieutenant Governors' Provinces, we took into account the following considerations:—

(a) that the Centre must have a special responsibility for the good government and the financial solvency of these provinces;

(b) that on account of the smallness of these areas and the scantiness of their resources, the need for Central assistance will continue for putting up the standard of their administration to the level in the major provinces.

Among the important decisions taken by us are:—

(1) Each of these three provinces should henceforth function under a Lieutenant Governor to be appointed by the President of the Indian Federation.

(2) Each of these provinces should normally be administered by a Council of Ministers responsible to the legislature as in other provinces, but any difference on an important matter arising between the Lieutenant Governor and the Ministry should be referred to the President of the Federation for final decision.

(3) Each of these provinces should have an elected legislature which should function like other provincial legislatures except that —

(a) the Federal Legislature will in the case of these provinces, have concurrent power of legislation even in respect of the subjects included in the Provincial Legislative List;

(b) all laws passed by the provincial legislature shall require the assent of the President of the Federation;

(c) the budget of the province after being voted by the provincial legislature shall require the approval of the President of the Federation before it becomes operative.

4. We are fully alive to the circumstances which led to the formation of the Delhi province in 1912. We also recognize the special importance of Delhi as the Capital of the Federation. We are, however, of the opinion that the people of the province which contains the Metropolis of India should not be deprived of the right of self-government enjoyed by the rest of their country-men living in the smallest of villages. We have, accordingly, placed the Delhi Province on a par with Ajmer-Merwara and Coorg and have recommended responsible Government subject to the limitations already indicated. Our detailed recommendations are given in the annexure.

Yours sincerely,

B. PATTABHI SITARAMAYYA
(Chairman)
N. GOPALASWAMY AYYANGAR
DESHBANDU GUPTA
K. SANTHANAM
C.M. POONACHA
MUKAT BEHARI LAL BHARGAVA
Members of the Committee.

[ANNEXURE 1]

LIEUTENANT GOVERNORS' PROVINCES

Delhi, Ajmer-Merwara including Panth Piploda, Coorg and such other provinces as may be so designated shall be Lieutenant Governors' Provinces.

The Provincial Executive

2. In each Province there shall be a Lieutenant Governor who shall be appointed by the President of the Federation.

3. The provisions of the Constitution Act relating to the term of office, qualification for appointment, eligibility for re-appointment, conditions of office, declaration before entering office by the Governor shall as far as possible be applicable in the case of the Lieutenant Governor. He may be removed from office by the President on grounds upon which a Governor may be impeached.

4. (i) The executive authority of the Province shall be vested in the Lieutenant Governor and may be exercised by him either directly or through persons acting under his authority.

(ii) The power to suspend, remit or to commute the sentence of any person convicted of any offence shall be vested in the Lieutenant Governor as in the case of major provinces.

(iii) Nothing in this section shall prevent the President of the Federation or the Provincial Legislature from delegating functions to subordinate authorities.

Administration of Provincial Affairs

5. (i) There shall be a Council of Ministers with the Chief Minister at the head to aid and advise the Lieutenant 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. The number of ministers shall not exceed three except with the approval of the President of the Federation.

(ii) In case of difference of opinion between the Lieutenant Governor and his ministers on any issue which he considers important, he may refer the matter to the President of the Federation, whose decision shall be final and binding upon the Province.

6. The provisions of the Constitution Act relating to the appointment, dismissal and with respect to the determination of the salaries of the ministers in the Governors' Provinces shall, as far as possible, be applicable in the case of Lieutenant Governors' Provinces.

Legislative

7. There shall for each of the Lieutenant Governor's Province be a Legislature, consisting of a single Chamber to be known as the Legislative Assembly. It shall be composed of members chosen by election.

8. The term of office of the elected members of the Assembly, the basis of franchise and other general provisions shall be on the lines as provided in the Constitution Act for Governors' Provinces except that the representation of the different territorial constituencies in the Assembly shall be on a scale of not more than one representative for every 5,000 persons subject to a maximum of 33 for Coorg, 15,000 subject to a maximum of 40 in the case of Ajmer-Merwara including Panth Piploda and 20,000 subject to a maximum of 50 in the case of Delhi.

9. The Provincial Assembly shall not have the power to make laws for federal subjects; and the subjects included in both the provincial and concurrent lists in the new constitution, will be treated as concurrent in respect of these minor provinces. Laws made by the federal legislature for these provinces in respect of any of these subjects shall prevail over laws passed by the Provincial Assembly in so far as the latter are inconsistent with the Federal laws.

10. Laws passed by the Provincial Assembly shall require the assent of the President of the Federation.

11. The provisions of the Constitution Act relating to prorogation and dissolution of the legislature, the right of the Governor to address and send messages, election of members as Officers of the legislature and fixation of their salaries in Governor's Provinces shall apply *mutatis mutandis* in the case of Lieutenant Governors' Provinces.

12. The Provisions of the Constitution Act relating to the making of declaration by members, vacation of seats, disqualifications of members, their privileges and immunities, salaries and allowances, in the Provincial Legislatures shall be as far as possible be applicable in the Lieutenant Governors' Provinces.

13. The provisions of the Constitution Act relating to language to be used in the Provincial Legislature shall as far as possible be applicable in the case of these Provinces.

Administrative Breakdown

14. If at any time the President of the Federation is satisfied that the government of the Province cannot be carried on in accordance with these provisions, he should have power to supersede these arrangements, take the administration into his own hands and make such other provision for conducting it as he may consider necessary. The exercise of this power will be subject to the usual provisions relating to report to and control by the Federal Legislature in the case of emergencies in a Governor's Province.

Judiciary

15. (i) In the case of Coorg, the powers of a High Court shall be exercised by the Madras High Court.

(ii) For Delhi and Ajmer-Merwara there shall be a High Court established in Delhi having original as well as appellate jurisdiction over both the provinces. The Constitution of this High Court, the appointment of judges and their salaries, its jurisdiction and administrative functions shall be governed by the provisions of the Constitution Act applicable to the High Courts.

Provincial Services

16. (i) For higher appointments provision shall be made in the recruitment of All India Administrative Services for meeting the requirements of these three provinces.

(ii) Provision shall be made for transfers *inter se* of service personnel recruited in the above manner in these three provinces.

Representation in the Federal Legislature

17. Notwithstanding anything to the contrary in the Union Constitution regarding the basis of representation for the Houses of Federal Legislature, each of these three Minor Provinces should be treated as a unit of the Federation for purposes of representation in the two Houses of the Federal Legislature.

CHIEF COMMISSIONERS' PROVINCES

18. (i) Andaman and Nicobar Islands and such other areas as may be so designated shall be the Chief Commissioners' Provinces.

(ii) The Andaman and Nicobar Islands shall continue to be administered as at present with such adjustments in the administrative machinery as may be deemed necessary.

Additional Note by Shri Mukat Behari Lal Bhargava and Shri C.M. Poonacha, to the Chief Commissioners' Provinces Constitution Committee Report.

We, the members representing Ajmer-Merwara and Coorg having signed the report find it necessary to append this additional note regarding the future of these two provinces.

The special problems arising out of the smallness of area, geographical position, scantiness of resources attended with, what may be called administrative difficulties of many a complex nature may, at no distant future, necessitate the jointing of each of these areas with a contiguous unit. Therefore, we feel that a specific provision should be made in this chapter of the constitution to make possible such a union after ascertaining the wishes of the people of these areas. No doubt, our attention was drawn to clause 3 of the Union Constitution Committee Report, which is yet to be adopted by the Constituent Assembly, wherein certain provisions relating to the creation of a province, altering the boundaries of a province, etc., are embodied. But after careful examination we feel that the proposed clause 3 of the Union Constitution Committee Report is of a very restrictive nature and does not in specific terms contemplate the inclusion of an Indian Province of areas with a State or Group of States. Taking into account the situation of Ajmer-Merwara which is surrounded on all sides by Rajputana States such a clause would perpetually leave Ajmer-Merwara in isolation even though the people of Ajmer-Merwara may at any time decide against it. Accordingly we press upon the Constituent Assembly the urgency of incorporating a suitable provision in this chapter of the Constitution so as to make it possible for each of these areas to join a contiguous unit.

APPENDIX B

No. CA/103/Cons/47
CONSTITUENT ASSEMBLY OF INDIA

COUNCIL HOUSE,
New Delhi, the 5th December 1947.

To

THE SECRETARY,
CONSTITUENT ASSEMBLY OF INDIA,
COUNCIL HOUSE, NEW DELHI.

Expert Committee on Financial Provisions

SIR,

I have the honour to forward herewith the Report of the Expert Committee on Financial Provisions of the Union Constitution for submission to the Hon'ble the President.

I have the honour to be,
Sir,
Your most obedient servant,
M.V. RANGACHARI,
Member-Secretary.

REPORT

Terms of Reference

[ANNEXURE 1]

We were appointed by the President of the Constituent Assembly to examine and report on the Financial Provisions of the Constitution Act with the following terms of reference: —

I. To examine, with the aid of the memoranda on the distribution of revenue between the Centre and the Provinces sent by the Government of India and the Provinces, the existing provisions relating to finance and borrowing powers in the Government of India Act, 1935, and their working during the last ten years and to make recommendations as to the entries in the lists and sections to be embodied in the new Constitution.

The following points shall, in particular, be kept in view in making the recommendations: —

(a) How are taxes to be allocated between the Centre and the Units as regards legislation, levy and collection?

(b) Which are the Federal taxes—

  (i) whose net proceeds are to be retained entirely by the Centre;

  (ii) whose net proceeds are to be entirely made over to Units;

  (iii) whose net proceeds are to be shared between the Centre and the Units?

(c) On what principles the taxes mentioned in (b) (iii) are to be shared between the Centre and the Units?

(d) What is to be the machinery for determining the shares: *e.g.*, whether a Financial Commission should be appointed immediately after the enactment of the Constitution to report on the principles of sharing and their application to be brought into effect when the Constitution comes into force; and whether the same or a similar Commission should review these principles and their concrete application periodically, say, once in five years?

II. What should be the principles on which Federal grants should be made to the Units in future? What should be the machinery for the determination of such grants: could the same Financial Commission as is referred to in I(d) above act as the machinery for this purpose also, or should it be a different one?

III. How could the Indian States be fitted into this general system as far as possible on the same terms as Provinces? Should a time lag be provided for their being so fitted in?

IV. On the assumption of financial responsibility for Defence, Foreign Affairs and Communications on behalf of the Indian States under arrangements for accession to the Federation, what special financial arrangements, if any, are necessary between the acceding States and the Federation?

V. Should the existing rights of the Indian States as to Federal taxes now levied by them be acquired on payment of compensation?

VI. How far is it feasible, on the centralization of all customs levied at the Federal frontiers, to permit Indian States affected by such centralization to retain such portion of the customs so levied at their frontiers as might be

attriments between the Centre and certain important Indian States as regards maritime customs, excises etc. may be of value in this connection.

VII. Some Provinces have claimed a larger percentage of the income-tax to be made over to them than under the existing system. Does this claim merit consideration; if so, to what extent?

VIII. A suggestion has been made that the Centre should be allocated only the excises on specified commodities, the rest of the field of excise being left to the Provinces to tap according to their needs. Would this be possible without any material detriment to Federal revenue?

IX. On the basis that the residuary powers are vested in the Centre in the new Constitution so far as the Provinces are concerned, and in the States so far as the States are concerned, is it necessary that any additional specific taxes should be entered in the Provincial List, and if so, what?

X. Is it necessary to make any modifications in the existing provisions as regards procedure in financial matters contained in Sections 33 to 37 and 78 to 83 of the Government of India Act, 1935?

XI. A large number of Indian States at present derive substantial revenues from land customs levied at the frontiers between their limits and those of neighbouring States or Provinces. One of the fundamental rights already adopted by the Constituent Assembly is to remove all internal barriers in regard to trade between Unit and Unit. Could these land customs be done away with either immediately or over a period of years, and if so, should any prejudice caused thereby to the finances of particular States be compensated and in what manner?

[The Committee should kindly indicate clearly which of its recommendations should go into the body of the Constitution and which should be provided for by Federal law.]

Prefatory Remarks

2. We began our work on the 17th November and have been sitting continuously. We have received memoranda from the various Provincial Governments setting out their claims for larger resources as well as their points of view in connection therewith. We have also received a memorandum from the Ministry of Finance of the Central Government giving a picture of the financial position of the Centre in the near future. The Secretariat of the Constituent Assembly has collected for us information on various matters relating to the States, and also helpful information regarding other Federations. It has also prepared a draft of the sections which come within our terms of reference; and this has considerably helped us in our work. We are indebted for all these memoranda, information and drafts. We are also indebted to some of the Provincial authorities who appeared before us in person and discussed with us informally the questions arising out of the memoranda presented by their Governments. We availed ourselves also of the specialised knowledge and experience of not only some of the officials of the Central Secretariat, but of some members of the Constituent Assembly and others who have unique knowledge of some of the problems under our consideration. All our discussions, however, were free and informal; and we did not, therefore, record any evidence, apart from the memoranda placed before us.

3. In particular, the other two of us would like to place on record our grateful appreciation of the assistance we have received from our colleague and Secretary Mr. Rangachari, who amidst his exacting, multifarious duties, including the

preparation of the interim budget, not only found time regularly to attend our meetings, but also placed his wide knowledge and experience at our disposal, and arranged to secure at short notice most of the available information required by us. We should also like to thank Mr. B. Das Gupta of the West Bengal Government Secretariat for the intelligent and extremely well informed assistance he gave us. We are also indebted to Mr. Mukerjee, Joint Secretary of the Constituent Assembly, for his help throughout our sittings and in particular for putting our recommendations in the shape of draft amendments to the Constitution.

4. Our terms of reference may be divided broadly into the four following groups:

(1) Relations between the Centre and the Units, and between the Units *inter se;*

(2) Financial procedure, *i.e.* relating to the budget, expenditure and money Bills;

(3) Borrowing powers of Units; and

(4) Relations of the Union with the States.

We have accordingly, for convenience, regrouped our terms of reference as follows:

(1) I, VII, VIII, IX, II

(2) X

(3) I

(4) III, IV, V, VI, XI

and discussed them, as far as possible, in the above order.

Brief History of Financial Relations

5. Before dealing with the working of the financial arrangements in the Government of India Act, 1935, it is necessary to give a brief account of the earlier arrangements so that we can have a correct picture of the problems before us.

6. The period before the passing of the Government of India Act, 1935, falls into two well-defined parts, namely, the period ending with the 31st March, 1921, *i.e.,* before the operation of the Government of India Act, 1919, and the period covered by that Act.

7. The process of financial development in this country has been one of evolution from a unitary to a quasi-federal type. The Government of India started as a completely unitary Government in entire control of the revenues of the country with the Provincial Governments depending on the Central Government for all their requirements. In the earlier years, Provincial Governments were given fixed grants for meeting the expenditure on specific services, and the first step in making specific sources available to them was taken when the Provincial Governments were given the whole or part of certain heads of revenue like Forest, Excise, Licence Fees (later to develop into Income-tax), Stamps, Registration, Provincial Rates, Law and Justice, Public Works, Education, etc. The funds released by this allocation were not adequate for the requirements of the Provinces and had to be supplemented, mainly by sharing with them in varying proportions the main source of Central revenue, namely, Land Revenue, and partly by making to them additional cash assignments. In 1904, the settlements with the Provinces were made quasi-permanent, thereby making the Provinces less dependent on the fluctuating grants from the Centre. This method of financing the Provinces was examined more than once and retained as the best suited to the then circumstances.

8. The Government of India Act, 1919, which, among other things, aimed at giving a reasonable measure of autonomy to the Provinces as the first step in the process of self-government, made the first clear-cut allocation of resources between the Centre and the Provinces without having any divided heads between them. Under this Act, certain specific heads were given wholly to the Provinces and the remaining sources were retained by the Centre. Thus among the principal heads of revenue, Land Revenue, Excise and Stamps were given to the Provinces, while the Centre retained Customs, Income-tax, Salt and Opium. Of the three great Commercial departments of Government, Railways and Posts and Telegraphs were retained by the Centre, while irrigation was handed over to the Provinces.

9. This allocation of resources between the Centre and the Units, particularly the assignment of the whole of Land Revenue to the Provinces, left the Central budget in a substantial deficit; and in the earlier years of this scheme, the Centre had to depend on the Provinces for contributions for balancing its budget. These contributions were fixed by what is commonly known as the Meston Award, and were designed to produce for the Centre an estimated shortfall of Rs. 9.8 crores resulting from the rearrangement of resources between the Centre and the Provinces. The contributions ranged from Rs. 348 lakhs from Madras to Rs. 15 lakhs from Assam, while one Province, namely, Bihar and Orissa, had to make no contribution at all. It is unnecessary for the present purpose to describe in detail the method by which these contributions were fixed. It is enough to mention that they became a source of constant friction between the Centre and the Provinces; and when substantial Provincial deficits occurred, an unceasing clamour developed for their withdrawal. Between 1925 and 1928 these contributions were partially remitted and they were completely extinguished in 1929.

10. The experience of the years under the 1919 Act clearly showed that the sources of revenue allocated to the Provinces were inelastic, and were insufficient to meet the increasing requirements of the Provinces for their expanding needs for nation building services such as Education, Medical Relief, Public Health etc., which fell almost wholly in the Provincial field. It was clear that some additional revenue heads had to be released to the Provinces; and while the Government of India Act, 1935 did not make any radical change in the allocation of heads between the Centre and the Units, it revived in a somewhat modified form the earlier principle of dividing the proceeds of certain Central heads, the two heads concerned being Customs and Taxes on Income. The Act also provided for the grant of fixed subventions to some of the smaller Provinces, and gave the Centre power to raise Excise and Export duties for distribution among the Provinces and federating States. After an enquiry into the relative needs of the Centre and the Provinces by Sir Otto Niemeyer, the Provincial shares in the divided heads of Central revenue and the subventions to some of the Provinces were fixed by an Order-in-Council, which, subject to a modification during the war, continued till 15th August, 1947.

Present Constitutional Position

11. Under the Government of India Act, 1935, which is the starting point of our enquiry, the taxing jurisdictions of the Central and Provincial Legislatures are entirely separate. But, while the Provinces retain the whole of the net proceeds of all taxes levied by them, the Central Government has to give away either in part or in whole the net proceeds of some of the taxes levied by it.

12. The taxes, the net proceeds of which are to be, given away wholly to the Provinces, if levied, are—

(1) Federal Estate and Succession duties,

(2) Federal Stamp duties,

(3) Terminal Taxes on goods and passengers carried by Railway or Air,

(4) Taxes on Railway fares and freights.

The Centre can levy a surcharge on those taxes entirely for its own purpose. None of these taxes has in fact been levied, except that the Federal Stamp duties continue to be levied under the old laws, the duties however being collected and retained by the Provinces.

13. The Federal Taxes, the net proceeds of which are to be shared with the Provinces, fall into two groups: —

(1) taxes, the sharing of the net proceeds of which has been made obligatory by the Constitution *viz.,* income-tax and jute export duty.

(2) taxes, the sharing of the net proceeds of which has been left to be determined by the Federal Legislature *viz.,* Central Excises including duty on salt, and export duties except on jute and jute products. The Central Legislature has levied certain taxes under these heads, but has not provided for giving any share to the Provinces.

14. Besides providing for giving away the net proceeds of taxes in whole or in part to the Provinces, the constitution also provides for fixed grants-in-aid to some Provinces.

15. There is also a general provision for giving grants to Provinces at the discretion of the Central Government either for general or specific purposes.

16. Two tables showing the Constitutional position in respect of the revenues of the Federal and Provincial Governments respectively under the Government of India Act, 1935, will be found in Appendix I. We are indebted to Mr. Ayyangar's commentary on the Government of India Act, 1935, for these tables.

Review of Finances of Provinces and the Centre

17. Two tables giving the financial position of the Provinces and the Centre during the year 1937-38 to 1946-47 are set out in Appendix-II. In considering the working of the existing arrangements during the last decade, the most important point to note is that war broke out soon after the Government of India Act, 1935, came into operation.

18. During the war, all Provinces except Bengal and Assam had surplus budgets. Revenue receipts increased several times, mainly on account of wartime conditions and also because the Provinces levied a number of new taxes and increased the rates of existing ones; there were remarkable increases in receipts under Provincial, *i.e.,* Liquor and Drugs, Excises, and in the Provincial share of Income-tax. Most Provinces were under Section 93 administration. All development work was stopped. The Province are now faced with a heavy programme of expenditure without any corresponding increase in revenue. On the contrary, even apart from voluntary abandonment of revenue as in the case of Liquor Excises, the revenue is likely to down much below wartime levels. Land revenue, both in the permanently and temporarily settled provinces, is not likely to expand. State purchase of zamindaries will not bring any return for years to come. In ryotwari Provinces, remissions are likely to be more liberal than before, and there is thus little prospect of an increase in land revenue. Receipts from stamps and registration fees are not likely to increase much, while forest revenue will perhaps dwindle on account of large scale felling during the war. Receipts from sales tax, electricity tax and entertainment tax may not fall, though they will be below the war-time peak for some time to come.

19. During the war and after, most of the Provincial Governments have practically exhausted the entire field of taxation reserved for them. Moreover, Provincial Governments have to share the Provincial field with Local Bodies, and on that account too, need adequate resources. A substantial transfer of revenues from the Centre to the Provinces, therefore, seems inevitable, if essential and overdue programmes of social service and economic development have to be undertaken.

20. At this stage, we would refer to the adoption, by most Provincial Governments, of a prohibitionist policy; and of the inevitable loss of substantial revenue by all of them. Obviously, it is for the provinces to find alternative provincial resources from which to recoup the loss; and in any case, it would not be practicable for provinces to expect sufficient assistance from the Centre for this purpose, at any rate for many years. The point that we wish to emphasise is that it will be for the provincial Governments to balance the urgency of schemes of development against the advisability of social reforms like prohibition, and that in any case, they must not embark on schemes, whether of reform or development, depending merely on the possibility of obtaining assistance automatically from the Centre.

21. To turn now to the Centre, it has been working on deficit budgets. The large surpluses that were expected sometime ago have not been, and are not likely to be realised, mainly because of the food shortage, the refugee problem and other causes arising out of the partition of the country, particularly, continued heavy expenditure on Defence. These are, however, temporary problems, and we consider that the financial position of the Centre is essentially sound. As these temporary problems are solved, the budgetary position of the Centre will necessarily get better. There is scope for improvement in the administration of Central taxes, and particularly of taxes on income. In respect of taxes on income, it should be possible for the Centre not only to collect more in future in the ordinary course every year, but to secure for the exchequer, by legislative changes, if necessary, the large sums that are believed to have been successfully kept back from the Government in recent years. We do not, however, expect any appreciable change under Customs and Excise; and we do not expect Railway contributions on anything like the scale during the war. Even after the temporary problems referred to above have been solved, expenditure on Defence and Foreign Affairs would still be substantial. The Defence Services will probably be reorganised and re-equipped, and it is not possible to foresee what would be the scale of expenditure for properly equipped defence services even on a peace-time basis. There is little prospect on the other hand of reduction in the service of the national debt but there is, however, scope for reduction in the existing civil expenditure.

22. The problem before us is how to transfer from the Centre to the provinces, sufficient amount which, while not placing too great a strain on the Centre, would provide adequate resources for the inauguration of useful schemes of welfare and development by the Provinces. While the Centre, on its present basis, may not be in a position to part with substantial sums, we feel that with the resolution of its temporary difficulties and improvement in its tax administration, together with the levy and collection of taxes evaded in the past, it can with no serious risk to its own budget part with sizable sums every year. We are suggesting later in detail how these sums should be regulated. We have already referred to the need for Provinces having clear priorities as between contending demands for money, and we have no doubt that the Provinces will in the earlier years utilise the additional resources now placed at their disposal by concentrating on schemes that would add to the productive capacity of the country and consequently the income of the people and thus enable the Provinces to embark on further schemes of reform and development.

Claims of Provinces

23. Every Province has drawn pointed attention to the urgency of its programmes of social service and economic development and to the limited nature of its own resources, both existing and potential, and all of them have asked for substantial transfer of revenues from the Central sources. A summary of the detailed suggestions made by them, which very considerably, is set out in Appendix III.

24. On the question of apportionment of income-tax among Provinces also, the provinces differ widely in their views. Bombay and West Bengal support the basis of collection or residence, the United Provinces that of population, and Bihar a combined basis of population and origin (place of accrual); Orissa and Assam want weightage for backwardness. East Punjab, while suggesting no basis, wants her deficit of Rs. 3 crores somehow to be met.

25. In the case of excise taxes, the bases suggested are production, collection, consumption and population, while Assam suggests some weightage for its low level of revenue and expenditure. Assam has further pressed for special treatment of excises collected on wasting assets, *e.g.,* the petroleum raised in Assam. Assam also wants a share of the export duty on tea.

General Observations

26. Before we proceed further we would make a few general observations.

India has federal form of Government, and every federation is based on a division of authority and involves a certain amount of compromise. In this country, federation has been the result of gradual devolution of authority. It has not come into existence through agreements among sovereign States as in some other federations.

27. What we have to do is to distribute the total available resources among Federal and Provincial Governments in adequate relation to the functions imposed on each; so, however, that the arrangements are not only equitable in themselves and in the interests of the country as a whole but are also administratively feasible. We have also to ensure that there is not too violent a departure from the *status quo,* and also to see that while we have as much uniformity as possible, weak Units are helped at least to maintain certain minimum standards of services.

28. The basic functions of a Federal Government are Defence, Foreign Affairs and the service of the bulk of the national debt, and they are all expensive functions, particularly in the light of the limited resources of the country. The head "Communications" would ordinarily at least pay for itself. The Federal Government may also have to assume leadership in the co-ordination and development of research and higher technical education. Normally, however, apart from war or large scale internal disorder, the expenditure of the Centre should be comparatively stable. The needs of the Provinces are in contrast, almost unlimited, particularly in relation to welfare services and general development. If these services, on which the improvement of human well-being and increase of the country's productive capacity so much depend, are to be properly planned and executed, it is necessary to place at the disposal of Provincial Governments adequate resources of their own, without their having to depend on the variable munificence or affluence of the Centre. The Provinces must, therefore, have as many independent sources of revenue as possible. On the other hand, it is not practicable to augment their revenues to any considerable extent by adding more subjects to the Provincial Legislative List, without simultaneously up-setting the equilibrium of the Centre. We cannot, therefore, avoid divided heads; and what we have to aim at is to have only a few divided heads, well

balanced and high-yielding, and to arrange that the shares of the Centre and the Provinces in these heads are adjusted automatically without friction, or mutual interference.

29. In this country the lack of sufficient economic and financial statistics and other similar data is a great handicap. Therefore, the allocation of resources has to be made largely on the basis of a broad judgment, at any rate until the necessary data become available. We attach great importance to the collection of these statistics and to connected research, and trust that the Government will make the necessary arrangements without delay. In the meantime we have made our recommendations on the best judgment we could give to the exiguous data available.

List of taxes for the Centre and the Units

30. We recommend no major change in the list of taxes in the Federal Legislative List as recommended by the Union Powers Committee. We however, recommend the substitution of the limit of Rs. 250 for Rs. 50 in clause 200 of the Draft Constitution relating to taxes on professions, trades, callings and employments. We observe from the Draft Constitution that it has been proposed to transfer to the Federal Legislative List stamp duty on transfer of shares and debentures, but we presume that the duties will continue to accrue to the Provinces. In view of the far-reaching effects on public credit and finance of Stock Exchange transactions, we consider that the Centre should have the power to legislate for the regulation of such transactions. If such regulation involves the levy of taxes, we recommend that such taxes should be retained by the Centre except that if the taxes take the form of mere duties on transfers of shares and debentures, the Provinces should have these duties just like other Stamp duties. We accordingly recommend the entry in the Federal Legislative List of a new item "Stock Exchanges and futures market and taxes other than Stamp duties on transactions in them".

31. In the list of taxes in the Provincial Legislative List, we recommend the following changes:—

(1) In entry 43, the words "hearths and windows" may be deleted. Such taxes are not likely to be levied. In any case, they would be covered by the word "buildings".

(2) In entry 53, the word "cesses" should, we think, be replaced by the word "taxes".

(3) Similarly, in entry 56, we would substitute the word "taxes" for the word "dues".

(4) In entry 50, we would make the following changes:—

(a) for the word "sale", we would substitute "sale, turnover or purchase", in order to avoid doubt.

(b) We would also add words such as "including taxes in lieu thereof on the use or consumption within the Province, of goods liable to taxes by the Province on sale, turnover or purchase". This addition is suggested in order to prevent avoidance by importing for personal use from outside the province.

32. One of the Provincial Memoranda has suggested that the entry "State Lotteries" should be transferred to the Provincial List, but, as we do not wish to encourage State Lotteries, we should prefer the subject to remain Central where, too, we hope, it will not be used.

Shares in certain taxes

33. We have no new items to suggest for insertion in the Provincial Legislative List.

34. The Federal Government will levy and collect all the taxes in the Federal Legislative List. But, according to our recommendations in the following paragraphs the Centre will retain the whole of the net proceeds of the following taxes only, *viz.*:—

(1) Duties of customs, including export duties.

(2) Taxes on capital value of assets and taxes on the capital of Companies.

(3) Taxes on Railway fares and freights.

35. At present, the Central Government shares the net proceeds of the Jute Export duties with the jute-growing Provinces and has to hand over to the Provinces the whole of the net proceeds of taxes on railway fares and freights, if levied. As regards the latter, we recommend that, if such taxes are to be levied at all, they should be wholly Central, for, we cannot see any difference in substance between such taxes and a straight addition to fares and freights. As regards the former we are of the opinion that an export duties are capable of very limited application and have to be levied with great caution, they are unsuitable for sharing with the Provinces.

36. It is necessary, however, to compensate the Provinces concerned for the loss of this item of revenue and we recommend that, for a period of 10 years or till the export duties on jute and jute products are abolished, whichever may be earlier, fixed sums as set out below be paid to these Governments as compensation every year.

PROVINCE	AMOUNT
	Rs.
West Bengal	100 lakhs
Assam	15 lakhs
Bihar	17 lakhs
Orissa	3 lakhs

In arriving at these figures which we have based on the figures of pre-war years, we have taken all relevant circumstances into account, and in particular the concentration of manufacture in West Bengal. If at the end of ten years, which we think should be sufficient to enable the Provinces to develop their resources adequately, the Provinces still need assistance in order to make up for this loss of revenue, it would no doubt be open to them to seek grants-in-aid from the Centre, which would be considered on their merits in the usual course by the Finance Commission.

37. Of the remaining Federal Taxes, we recommend that the net proceeds should be wholly or partly given away to the Provinces as indicated below:

38. Under the present arrangement the Provinces receive 50 per cent of the net proceeds of income-tax, except what is attributable to Chief Commissioner, Provinces and taxes on federal emoluments. The net proceeds of the Corporation Tax are also excluded for the purpose of the sharing. Subject to what we have said in paragraph 49 regarding tax on agricultural income, we recommend that, while the net proceeds attributable to Chief Commissioners' Provinces should be retained wholly by the Centre, the other reservations should go, and that the Provinces should get not less than 60 per cent of the net proceeds of all income tax including the net proceeds of Corporation Tax, and taxes on federal emoluments. For the purpose of the division, income-tax will mean any levy made under the authority of the entry "Taxes on Income" in the Federal Legislative List.

39. We also consider that over and above its share in the net proceeds retained by it normally, the Centre should be empowered to levy a surcharge whenever conditions require such a levy; obviously such occasions should be rare are not last for unduly long periods.

40. Excise duties are ordinarily closely connected with customs duties and, barring liquor and drug excises, which we consider, should continue to remain Provincial are inherently not suited for provincial taxation. On the other hand, they are only a species of consumption taxes of which another species namely, sales, turnover and purchase taxes have been the subject of provincial taxation for some time. The Memoranda received by us from the Provincial Governments are almost unanimous in demanding some share under excises; and our problem is to find not only more resources for the Units but to make their revenues more balanced. If it was possible to have excise on commodities not subject to Customs duties (whether revenue or protective) or not competing, or capable of competing with, or of substitution for, commodities subject to customs duties, *e.g.,* on rice or wheat or millets or on jute and jute goods consumed in India, we see no reason why such excises or a share thereof should not be allotted to the units, apart from the general political objection to the division of heads, *viz.,* the divorce of benefit from responsibility. But such excises are not likely to be levied. Again, it is obvious that Excise duties on commodities subject to a protective tariff or even a high revenue tariff could not be conveniently shared. In the circumstances, the utmost that we can suggest by way of assistance in this respect to the Provincial Governments is to hand over to them a share of one of the important Central Excises on a commodity not receiving tariff protection, *viz.*, Tobacco. Incidentally, the effective administration of this excise requires the active co-operation of Provincial Governments, which would be better forthcoming if they had a share in the tax. We are averse to giving the units a share in too many Central Excises; for, such an arrangement would not only magnify the political objection of benefit without responsibility but lead to administrative inconvenience, since the rates could not be altered except by the consent of all the beneficiaries.

We accordingly recommend that 50 per cent of the net proceeds of the excise duty on tobacco should not form part of the revenues of the Federation but should be distributed to the Provinces.

41. It will be seen from what has been said above that we are not in favour of the suggestion made in item VIII of the Terms of Reference, *viz.*, that the Centre should be allocated only the excises on specified commodities, the rest of the field of excise being left to the Provinces.

42. These duties cannot be administered satisfactorily except by or in the closest touch with the income-tax staff; and in any case, if the Centre is to part with a substantial amount of taxes on income and also a part of certain Central Excises, it is appropriate that it should get a share of the estate and succession duties. This will also give to the Federal Government a direct interest in the duty. Subject to what we have said in paragraph 49 about taxes on agricultural property, we recommend that not more than 40 per cent of the net proceeds of such duties should be retained by the Centre.

43. We recommend the continuance of the *status quo, i.e.*, the legislation in respect of the duties on the specified documents should be Central but Provinces will collect and retain the duties.

44. These taxes are not suitable except for purely local purposes, *i.e.,* for the benefit of municipalities, pilgrim funds, etc., but they can be conveniently levied and collected only by the Centre. The existing provisions may stand.

Grants-in-Aid and Subventions

45. Item II of our terms of reference refers to Grants-in-aid.

Assam and Orissa now get fixed subventions of Rs. 30 and Rs. 40 lakhs per annum, respectively. The recommendations that we have made for the increase in the Provincial share of income-tax and the transfer of a share in the excise on tobacco will increase their revenues substantially like those of other Provinces. Even so, however, we have little doubt that these two Provinces will still require fixed subventions on higher scales than at present.

The position of East Punjab is peculiar. Everything there is unsettled, and it will take some time for things to settle down. It is clear, however, that this Province will require a substantial annual subvention for some time to come.

The position of West Bengal is uncertain, and it is not clear how her finances will shape as a result of the partition. The liability that she will have to take over as a result of the partition is not yet known. All told, however, she will perhaps need some temporary assistance.

46. For lack of time and data, we have not been able to assess the subventions required by these four Provinces. We, therefore, recommend that the Central Government should immediately take up the question so that the amounts required by each of these Provinces may be determined in time. The amounts should be subject to periodical review by the Finance Commission to which we refer later.

47. We have suggested elsewhere that till the Finance Commission has been able to recommend a better basis of distribution, a part of the divisible pool of income-tax should be used in order to mitigate hardship in individual cases. The provision also contains an element of grants-in-aid.

48. It is clear that during the developmental stages of the country it will be necessary for the Centre to make specific purpose grants to the Provinces from time to time. The provisions of clause 203 of the Draft Constitution seem to be adequate for the purpose. We have considered the question whether, as in Australia, grants should be made in order to equalise, or at any rate to reduce the disparity between the levels of services and of severity of taxation in the different provinces. There is undoubtedly something attractive in seeking to bring up the backward units at least to 'average' standards, both in effort (severity of taxation) and in performance (standards of services). In Australia, the maximum difference between the levels is said to be of the order of 20 per cent and the number of unit States is small. In India, on the other hand, as for example in the U.S.A., the difference in the levels is very wide and the number of units larger when acceding States come into the picture. In such a background 'averages' would be mere mathematical concepts totally unrelated to actual facts. On the other hand, even in a Federation of autonomous units, there is a great deal to be said for helping the less prosperous units to come up to the level of the more prosperous ones. As in all such matters we must take a realistic decision with reference to the conditions in our country. While we do not recommend the adoption in this country of the Australian system, we have no doubt that the Centre, when distributing specific purpose grants under clause 203 of the Draft Constitution, will bear in mind the varying circumstances in the different Provinces.

48-A. Section 199 of the Draft Constitution provides for special assistance to Assam in respect of expenditure for promoting the welfare of scheduled tribes in the province. We agree with this provision. It has been represented to us on behalf of Orissa that a similar provision should be made for assisting her to develop the backward areas of the Province. In the absence of any data, we have been unable to assess the measure of assistance, if any, required by this Province, and we content ourselves with expressing the view that if the Central Government, after a due examination of the question in all its aspects, decide the special assistance is necessary it should be provided on adequate scale.

Taxes on Agricultural Income and Property

49. It is obvious that the taxation of agricultural income by the Provinces, while all other income is taxed by the Centre, stands in the way of a theoretically sound system of income-tax in the country. We should, therefore, have liked to take this opportunity to do away with this segregation. In view of the ease with which the origin of agricultural income can be traced, it could be arranged that the tax from such income, even though levied and collected by the Centre as part of an integrated system of income-taxes, should be handed back to the Provinces; and it could be further arranged that till such time as the Centre in fact levied a tax on agricultural income, the Provinces already levying this tax might continue to levy it without restriction and with full power to vary the rates of tax. The interests of Provinces could thus be fully protected, and there could, therefore, be no financial objections from them. On the other hand, the present arrangement has the political merit of keeping together in one place both benefit and responsibility, a rather important point, seeing that the Provinces will have full control over but few important heads of revenue. A few provinces have, in Act, levied the tax and are administering it for some time. Perhaps also, the Provinces can administer this particular tax with greater facility than the Centre. For the present, therefore, we have decided to continue the *status quo,* but, in view of the importance of the matter, would recommend that the Provinces should be consulted at once and if a majority, including of course those now levying the tax, agree, tax on agricultural income may be omitted from the Provincial List of subjects, consequential changes being made elsewhere in the Constitution. Our foregoing remarks apply *mutatis mutandis* to Succession and Estate Duties on agricultural property also.

Division of proceeds of Revenue between Provinces

50. *Income-tax*—As regards the basis of distributing between Provinces the share of proceeds from taxes on income, we are of the opinion that no single basis would lead to equitable results. Origin or *locus* of income is no doubt relevant, but in the complex industrial and commercial structure of modern times, where a single point of control often regulates a vast net-work of transactions, where the raw materials come from one place, are processed in another, manufactured in a third, marketed wholesale in a fourth and ultimately sold in retail over a large area, contracts are made at places different from where they are performed, money is paid in at one place and goods delivered at another and more than one of these stages relate to the same tax-payer the assignment of a share of profits to each stage can only be empirical or arbitrary.

51. Again, the residence of the tax-payer is an important factor, but apart from the artificial legal definition of residence for income-tax purposes; the predominance of joint stock enterprise in business, the dispersion of the shareholders of companies all over the country and even outside, the possibility (emerging from the artificial definition) of simultaneous residence in more than one area, the non-assessment (due to various reasons) of a large number of shareholders, and the absence of authoritative, *i.e.,* tested, information in the income-tax records as to the province of residence of a resident of India (for, today, it is immaterial to the Income-tax Department in which particular Province on assessee is resident), all these together make his criterion of residence a difficult factor to apply in practice in distributing the proceeds of the tax. Even if the statistical difficulties were got over, residence could be changed at the will of the tax-payer.

52. Another possible criterion is the place of collection. This place is usually the principal place of business of the tax-payer, or his residence, if he is not

carrying on a business or profession. The objection to this factor is that it is unfair to the areas of origin and sale which it completely ignores, while it gives for too much weight to the place of control of a business, which is usually, though not necessarily, the place of collection. Moreover, even more than in the case of residence, the place of collection can be easily altered at the will of the tax-payer.

53. Another possible basis is that of needs, *i.e.,* the shares would be regulated somewhat like grants-in-aid, and rather than go into elaborate enquiries for this purpose, the population of a Province could be taken as a rough measure of its needs. The objection to this basis is that a 'share' is something to which a Province is entitled because its citizens or things have in some measure contributed to the fund, while a grant is something given to it without regard to its contribution to the Centre or to any common pool.

54. We have said enough to show the difficulties of the problem, but the difficulties have somehow to be faced and met, unless we keep the whole of the taxes on income as Central and permit Provinces simultaneously to levy a Provincial income-tax on the basis of origin. In our opinion the latter course is not feasible in the circumstances of this country even if justifiable in theory; and pending enquiry by the Finance Commission the setting up of which we suggest later, we have no choice except somehow to make the distribution on as equitable a basis as can be devised in the circumstances.

55. We propose to proceed on the basis of collection as well as population and also to make some provision for adjustment on the basis of need. We recommend that the Provincial share, *i.e.*, 60 per cent. of the net proceeds be distributed among the Provinces, as follows:—

20	per cent on the basis of population.
35	per cent on the basis of collection.
5	per cent in the manner indicated in paragraph 56.
60	

For the distribution of the first two blocks, population figures of the previous census and collection figures as certified by the Auditor-General should be accepted as authoritative.

56. The third block of 5 per cent. should be utilised by the apportioning authority as a balancing factor in order to mitigate any hardship that may arise in the case of particular Provinces as a result of the application of the other two criteria; in distributing this block it would be open to the authority to take into account all relevant factors.

Excise duty on Tobacco

57. In our view, the most equitable method of distributing this duty is on the basis of estimated consumption. We have no doubt that the Government will take steps to obtain necessary statistical information if it is not already available.

Estate and Succession Taxes

58. These taxes have not so far been levied. One of the hurdles to be crossed before they can be levied is the determination of the manner of distribution of the net proceeds among Provinces. Until the taxes are actually levied and collected for some time, no data about their incidence will be available. Hence, the levy will have to start with some a *priori* basis of apportionment among Provinces. We accordingly recommend that until the Finance Commission is in a position to evolve a better method on the basis of data

available to it, the net proceeds should be distributed among the Provinces as follows:—

The net proceeds attributable to real property—On the basis of the location of the property.

Of the balance—

75 per cent on the basis of the residence of the deceased;

25 per cent on the basis of the population of the province.

The administration and distribution of these taxes would, in the ordinary course, fall on the Central Board of revenue, but it would be necessary to empower an appropriate authority to adjudicate in the case of disputes between Provinces as to the residence of individuals.

Effect of the proposals

59. The net effect of all our recommendations together is that, on the present basis of revenue, the Centre will have to transfer to the Provinces a sum of the order of Rs. 30 crores annually. It will recover a part of this loss by the imposition of the Estate and Succession Duties, of the net proceeds of which it will retain 40 per cent. We believe that it will not be beyond the capacity of the Centre to part with this amount annually during the next five years, though it must cause some strain, while at the same time the transfer will enable the Provinces to start their programme of essential social services and economic development.

60. In our recommendations regarding the distribution of proceeds of taxes among the Provinces, we have not only proceeded on more than one basis, but have provided for an element of flexibility in order to mitigate hardship. We have also provided for a periodical review so that the method of apportionment can be adapted to changing conditions from time to time on the basis of experience. We have further provided for grants-in-aid both to the weaker Provinces and to Provinces in difficulty.

61. We have also tried to make the whole arrangement as automatic and free from interference as possible. The basic features of the scheme will be embodied in the Constitution itself, while periodic changes will be made by the President on the recommendation of the Finance Commission, which we hope, will command the confidence of all. As frequent changes are undesirable, we have recommended a five-yearly review, though in special circumstances the Finance Commission may embark on a review at a shorter interval. The Provinces will now be sure of their position and can go ahead with their plans.

62. It is needless for us to add that to the extent that the Centre transfers its resources to the Provinces in the shape of new or increased shares in revenue, its ability to give grants to the Provinces for specific or other purposes must be correspondingly reduced.

63. We may not have been able in our proposals to satisfy everybody or to provide for every contingency that may possibly arise in the future, but we have tried to do the best possible under the circumstances.

Finance Commission

64. For reasons already stated, our recommendation as to the initial basis of apportionment among Provinces is not intended to be permanent. Conditions may change. The working of the scheme for some time will in itself produce some data that would indicate the nature and direction of the changes required. It is necessary, therefore, to have a periodical review of the whole position by a neutral expert authority.

65. We recommend for this purpose, among others, the appointment of a high level Tribunal of five members including a Chairman who has been, or is, holding high judicial office, not lower than that of a Judge of a High Court. This Tribunal may be called the Finance Commission. There may not ordinarily be enough work for the Commission to keep it busy continuously, and the members need not, therefore, devote their whole time to the work. The members should be appointed by the President in his discretion if only because a Commission of this kind would have frequently occasion to deal with points of conflict between the Centre and the Units. While we would not lay down any conditions in the Statute as to how these members should be selected, we recommend that two should be selected from a panel of nominees of Units Governments and two others from a panel of nominees of the Central Government, the Chairman being selected by the President himself. One at least of the five should possess close knowledge of the finances and accounts of Governments, while another at least should have a wide and authoritative knowledge of economics. It would be an advantage if one or more were public men with vide experience. It would be further advantage if a member possessed more than one qualification, and steps should be taken to secure the services of such individuals. The appointments might be made for 5 years and be renewable for another five years.

66. Between now and the setting up of the Finance Commission, we recommend that the Central Government should take steps in consultation with the Provinces, to collect, compile and maintain statistical information on certain basic matters such as the value, volume and distribution of production, the distribution of income, the incidence of taxes, both Central and Provincial, the consumption of important commodities, particularly those that are taxed or likely to be taxed, etc. The Finance Commission, when set up, would then have some basic information to go upon, and would no doubt call for such further information as it may need. It would also, to the extent necessary, arrange for continuous examination and research in respect of all important matters.

67. The Finance Commission should be entrusted with the following functions:—

(a) To allocate between the Provinces, the respective shares of the proceeds of taxes that have to be divided between them;

(b) To consider applications for grants-in-aid from Provinces and report thereon;

(c) To consider and report on any other matter referred to it by the President.

68. While these categories would exhaust the duties of the Commission, it should be open to the Commission to make any recommendations it may think expedient in the course of the discharge of these duties. It may, for example, suggest a variation in the heads of revenue assigned to the Provinces, *i.e.*, the transfer of new heads or the withdrawal of existing heads, or increases in the shares of existing heads or a reduction in these shares. In making all such recommendations, the Commission will take into account all relevant matters, including the state of finances of the Centre. Its recommendations, in so far as they do not involve any change in the Constitution, would, when accepted by the President, be given effect to by him by order, while recommendations involving a change in the Constitution, if similarly accepted by him, would be dealt with like any other proposed amendment to the Constitution.

69. The Commission's first function would be of the nature of an arbitration, and therefore, the Commission's decisions will be final. As regards

the second function, we have no doubt that the recommendation of the Commission in respect of grants-in-aid would be given the utmost weight by the President and not ordinarily departed from by him.

70. The basis for the allocation of revenues referred to in item (a) should ordinarily be settled by the Commission at intervals of five years, but it should be open to the Commission to shorten the interval if it feels satisfied in special circumstances that such shortening is called for.

71. We would further recommend, in order to save time, that the Finance Commission may be set up in advance of the coming into effect of the Constitution, and its status regularised after the Constitution comes into effect.

Residuary Powers of Taxation

72. It appears that under the new Constitution, residuary powers will be vested in the Centre, so far as the Provinces are concerned, while the corresponding residuary powers in respect of the States will be vested in the States themselves. The question has therefore been raised whether, as a consequence, as many specific taxes as possible should not be entered in the Provincial List of subjects. We cannot think of any important new tax that can be levied by the Provinces, which will not fall under one or the other of the existing categories included in the Provincial List. We think that the chance of any practical difficulty arising out of the proposed constitutional position is remote, and, in any case, it seems to us that if a tax is levied by the Centre under its residuary powers, there will be nothing to prevent the proceeds of the whole or a part of this tax being distributed for the benefit of the Provinces only. As a matter of abundant caution, however, it may be laid down in the Constitution that if any tax is levied by the Centre in future under its residuary powers, and to the extent that the States do not agree to accede to the Centre in respect of the corresponding subject the whole or a part of the proceeds of the tax shall be distributed between the Provinces and the acceding States only.

This disposes of Item IX of our Terms of Reference.

Exemption of Provincial Governments from Taxation

73. Section 155 of the Government of India Act provides that profits from trading by a Provincial Government would be taxable only if the trade was carried on outside the Province. The exemption from Central taxation of trade by Provincial Governments carried on within the provincial limits did not matter much in the past; for the Governments had few trading operations. With the present tendency towards nationalisation (*e.g.,* many provinces have already taken up quite seriously the nationalisation of road transport), the Centre should have some power to levy either income-tax or a contribution in lieu of income-tax in respect of these trading activities. Disputes as to such contributions should, we consider, be examined and adjudicated upon by the Finance Commission to which we have already referred. We feel that if nationalisation of industries or trades takes place rapidly, the whole question would have to be reviewed *de novo,* for the entire structure of the tax system of the country would be completely changed.

74. In the meantime we make the following recommendations:—

(a) The existing practice should continue in respect of trading operations of the Central Government, *i.e.,* no income-tax should be levied on the profits. It should be open to the Centre, however, to levy a contribution, as in the case of Railways, for its sole benefit from such operations. If the trading is carried on by a separate juristic person, tax will be levied even if the Government is the dominant shareholder.

(b) Tax should be levied on the trading operations of Units (as also of local bodies), whether carried on within or without their jurisdiction; and the tax or the contribution in lieu thereof should be treated as ordinary income-tax revenue for the purpose of the divisible pool. We presume that if there are no profits, there will be no contribution; but if this presumption is wrong, we suggest that the contribution should be treated as part of the divisible pool of income-tax.

(c) We recommend that quasi-trading operations incidental to the ordinary functions of Government such as the sale of timber by the forest department or of jail products by the jail department should not be treated as trading operations for this purpose.

Emergency Provisions

75. The needs of the Centre in times of emergency, such as war or large scale internal disorder, cannot be provided for through the detailed allocation of heads of revenue or of shares therein. It is obviously not possible to legislate how emergencies should be met. We would suggest that there should be a special provision in the Constitution authorising the President in an emergency to suspend or vary the financial provisions in such manner as he may think best in the circumstances. For example, if there is a war and an Excess Profits Tax is levied, it might be necessary for the Centre to retain the whole of this tax for itself.

Procedure in Financial Matters

76. Item X of our terms of reference is as follows:—

"Is it necessary to make any modifications in the existing provisions as regards procedure in financial matters contained in Sections 33 to 37 and 78 to 83 of the Government of India Act, 1935?"

77. The present financial procedure in the federal sphere is laid down in sections 33—37 of the Government of India Act, 1935. The corresponding clauses in the Draft Constitution as prepared by the Secretariat of the Constituent Assembly are 74, 75 and 77—81. We have two recommendations to make:—

(1) When a money bill is sent from the Lower House to the Upper, a certificate of the Speaker of the Lower House saying that it is a money bill should be attached to, or endorsed on, the bill and a provision to that effect should be made in the Constitution on the lines of the corresponding provision in the Parliament Act, 1911. This will prevent controversies about the matter outside the Lower House.

(2) After clause 80, a provision may be made making it necessary for Government to approach the Legislature for regularising any excess expenditure that might be discovered in audit after the close of the year. This is, in fact, done even now, but there is no statutory obligation to do so.

Subject to these two recommendations, we approve of the provisions in the Draft Constitution.

78. Financial procedure in the Provincial field is governed by sections 78—82 of the Government of India Act, 1935. The corresponding provisions in the Draft Constitution occur in clauses 149—153. We recommended—

(1) that in a Province with a bicameral Legislature, if any, the powers of the Upper House over money bills should be exactly the same as at the federal level;

(2) that the new provision, in respect of a vote on excess grants, recommended by us at the federal level should be repeated at the provincial level also.

79. It is usual in written democratic constitutions to provide that no money can be drawn from the treasury except on the authority of the Legislature granted by an act of appropriation. In this country, the practice has been to authorise expenditure by resolutions of Government after the demands have been voted, and not by law. As the existing practice has been working well in this country, appropriation by law does not appear to be necessary.

Auditor-General

80. Though the question has not been specifically referred to us, we consider that the status and powers of the Auditor-General are so closely connected with financial procedure that we have gone into this matter also. The provisions in respect of the Auditor-General of the Federation are contained in clauses 106—109 of the Draft Constitution, and those in regard to the Auditor-General of the Provinces, in clauses 174-175. In substance, all these clauses repeat the existing provisions in the Government of India Act. We consider the provisions to be adequate for the purpose of securing the independence of the Auditor-General. We notice that the Auditor-General of India is to perform the functions of the Auditor-General in respect of the Provincial Governments also for an initial period of three years, and there after, until a particular Provincial Government chooses to appoint its own Auditor-General. We favour the continuance of a single Auditor-General for the Government of India as well as for the Provincial Governments, and it is possible that the Provincial Governments will also prefer that course, and will choose not to use their power of appointing separate Auditor-General for the Government of India as well as for the Provincial Governments, and it is possible that the Provincial Governments will also prefer that course, and will choose not to use their power of appointing separate Auditor-General of their own. The Draft Constitution, however, give them the option to appoint Auditors-General if they think fit so to do. We are not sure whether it is possible altogether to do away with this option, much as we should like to do so; but if the option remains, we recommend that the provisions of sub-clause 3 of clause 174 should be amended so as to make the Auditor-General of a Province eligible for appointment as Auditor-General of another Province also.

Borrowing Powers

81. This question is covered by Item-I of our Terms of Reference.

The present position is that the Provinces have the freedom to borrow in the open market in India except when they are indebted to the Centre.

The most outstanding advantage of the freedom of borrowing is the sense of financial responsibility it creates; for, there is no more accurate, sensitive and dependable meter of the credit of a borrowing Government than the reaction of the securities market. We do not therefore wish to withdraw this freedom. Nevertheless, it is necessary to have some machinery which would ensure that borrowing Governments do not, by their competition, upset the capital market. This machinery is now provided through the Reserve Bank which advises all the Governments, but in view of the ambitious programmes of development both by the Centre and by the Units, it may become necessary to set up some kind of expert machinery, both competent and definitely empowered, to fix the order of priority of the borrowings of the different Governments. In some countries, this co-ordination is effected either by a Ministerial Conference or by a Loans Council. Such machinery should not affect the responsibility of a Government for its borrowing policy, and

should help only in the timing of the loan and avoidance of unnecessary competition. The co-ordination by the Reserve Bank has worked well in practice and so long as it works well we do not recommend any change. We assume that there will be no distinction between federating States and the Provinces in this respect.

82. We are of the opinion that it should not be open to a Provincial Government or to a Government of a State to go in for a foreign loan except with the consent of the Federal Government and except under such conditions, if any, as the Federal Government may think fit to impose at the time of granting the consent. We notice, however, that there is an entry, *viz.*, "18. Foreign Loans" in the Federal Legislative List in the Draft Constitution. We are not sure whether, the insertion of this entry in the Federal Legislative List is enough to prevent the Government of a Unit from going in for a foreign loan. We, therefore, recommend that the point be examined, and if the provision is not found to be adequate, a specific provision should be made in clause 210 of the Draft Constitution making it necessary for the Government of a Unit to obtain the consent of the Federal Government before going in for a foreign loan.

Problem of Indian States

83. The points at issue are contained in items III, IV, V, VI and XI of our terms of reference.

This part of our work is the most difficult party thereof, and the difficulty arises as much from the lack of statistical data as from the complications of the problem itself; for, not only do conditions differ widely between the Provinces as a whole and the States as a whole, but from State to State, so that it is difficult to apply a common yard-stick.

84. The Union Powers Committee of the Constituent Assembly in Para 2 (d) of their report, dated 17th April, 1947, has expressed its view on this subject in the following terms:—"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 subjected to agreements between them and the Union Government. Provision should accordingly be made in the Constitution for implementing the above recommendation." We entirely agree with these observations.

85. We assume that the ultimate object of the Federation must be to secure for the federating States the same, or nearly the same standards of economic development, fiscal arrangements and administrative efficiency as in the Provinces. It is only against this background that the States can have the same identity of interest with the Union as the Provinces have.

86. The first difficulty met with in our investigation is that many of the smaller States have neither a budget nor effective audit, so that adequate and reliable information about their financial position, on a basis permitting comparison with Provinces, is not available. We recommend accordingly that it should be made obligatory within as short a period as possible for each State to arrange for the preparation and authorisation of a periodical budget and the maintenance of proper accounts and audit and to send copies of its budget, accounts and audit reports to the Union Government.

87. In the absence of sufficient data, we are not in a position to make recommendations other than of a general nature. We are clear in our mind that the States should gradually develop all the taxes in the Provincial Legislative List so that they may correspondingly give up reliance on taxes in the Federal Legislative List. This process however would necessarily take some time and in the meanwhile it will be necessary to have transitional arrangements.

88. We will now take up Land Customs. We do not recommend the immediate abolition of Land Customs, for we find that such a course would lead to a serious dislocation in the finances of many States. Moreover, where there is no large re-export trade, these land customs, though a possible source of annoyance, are really of the nature of octroi duty levied at a few point of entry. On a long view, however, in the interests of the States themselves, these duties might be replaced by other taxes, such as sales and turn-over taxes. We recommend accordingly that Land Customs now levied by the States should be abolished during the next 10 years. As a first step it may be arranged that—

(1) a State shall not in future levy land customs on a commodity on which there is no such duty now;

(2) a State shall not after a fixed date, increase the rate on any commodity; and

(3) a State levying land customs should grant refunds on re-exports.

Gradual abolition over a period of 10 years should not cause any serious dislocation to the finances of these States, nor can there be any question of paying any compensation to these States, for the simple reasons that the Union Government will not gain any corresponding revenue.

89. Maritime customs should be uniform all through the Union, and the Federal Government should take over the administration of such customs in all the maritime States. If this arrangement results in the loss of any State of the revenue now enjoyed by it, it is only fair that the State should be compensated for the loss. Pending determination of the appropriate compensation in each case by a States Commission, the appointment of which recommend in a later paragraph, each State may be given an annual grant equal to the average revenue from this source during the last three years. The right of Kashmir to a rebate on sea customs may be similarly abolished on payment of a similar grant.

90. The Federal Government may levy Central Excises in all the States, but those States which now enjoy the benefit of a part or the whole of these revenues raised in their areas should, in lieu of such benefit, receive grants on the basis of the average revenue enjoyed by them from these sources during the last three years. In our opinion, neither this arrangement nor the one referred to in the foregoing paragraph should present any difficulty from the purely financial point of view either to the Union or to the States.

91. The India Income-Tax Act, with such modification as may be considered necessary by the President, may be applied to all the Federating States. The net proceeds of the tax attributed to the States may be credited to a States Income-Tax Pool and such portion not being less than 75 per cent of the net proceeds attributable to each State, as determined by the President, may be paid back to the States.

We are aware that many problems will arise in the course of allocating these proceeds between the different States, but they are not insoluble, and can be solved on lines similar to those followed in allocating similar revenues between the Provinces.

92. The need for a uniform system of income-tax both in the Provinces and in the States has become urgent not only because of the facilities afforded for evasion and avoidance of the Central Income-tax by the existence of States with lower rates of taxation or no tax at all, but also because it is alleged that industries are being diverted artificially by the incentive of lower taxation to areas not inherently suited for the industries.

93. Though we do not favour any abrupt change in the *status quo,* we do not attach much weight to the argument that the States are, as a whole, industrially backward and that they cannot, therefore, stand the same high rates of taxation, particularly income-tax, as the Provinces can. If the productive capacity of a State, and consequently its level of income, is low, it follows that the State will not have to contribute much by way of tax if it falls in line with the Provinces. If, on the other hand, the point is that industries should be artificially stimulated in the States somehow by the incentive of lower taxes, it is obvious that if the State is not suited for industrial development, the cost of bolstering up its industries must ultimately fall upon the Provinces and other States.

94. As already stated, we are not in a position to make detailed recommendations regarding the States. We recommend for this purpose the establishment of a States Commission with five members who should possess wide knowledge of the financial administration of Provincial, Federal or State Governments. Preferably, one of these members might be a member of the Finance Commission (for Provinces) referred to earlier in this report. The Commission should advise the President, as also the States, about their financial systems and suggest methods by means of which the States could develop their resources and fall into line with the Provinces as quickly as possible. One of the first tasks of the Commission will be to examine in detail the privileges and immunities enjoyed by each State, and also the connected liabilities, if any, and recommended a suitable basis of compensation for the extinction of such rights and liabilities. We consider in particular that the States Commission should deal with the problems before it with understanding and sympathy and suggest solutions which would not only be fair both to the States and to the Provinces, but enable the States to come up to the Provincial standards in as short a time as possible.

95. The States which come into the above arrangements would pay their contribution for Defence and other Central services through the share of the net proceeds of Central taxes retained by the Centre, and nothing more should be expected from those States. On the other hand, the States which accede but do not come into the above arrangements, should pay a contribution to the Centre, the amount of which should be determined by the States Commission having regard to all the relevant factors.

96. The constitutional arrangements in this respect, particularly during the interregnum of 15 years, should, in our opinion, be kept very flexible. The President should be enabled by order to adopt any financial arrangement he may find expedient with each State until such arrangement is altered by an Act of the Federal Legislature after necessary consultation with the States.

97. While the outlines which we have indicated above are capable of being applied to most of the major or even middle-sided States, it is, in our opinion, necessary to group together a number of smaller States in sizable administrative units before they can be brought into any reasonable financial pattern.

98. We are sorry that we have not been able to contribute anything more precise then we have done to this part of the terms of reference to us.

99. We enclose two Appendices (IV and V) one of which sets out in detail, as far as we have been able to collect, the rights and immunities enjoyed by various States, and the other setting out the total budgets of certain States and the part played by Land Customs in those budgets.

Summary of Recommendations

100. (1) No major change to be made in the list of taxes in Federal Legislative List as recommended by the Union Powers Committee. (Para 30)*

(2) The limit of Rs. 50 to be raised to Rs. 250 for taxes on professions etc. levied by Local Bodies. (Para 30)*

(3) An entry to be made in the Federal Legislative List of a new item "Stock Exchanges and Futures Markets" etc. (Para 30)*

(4) A few minor changes of a drafting nature to be made in the list of taxes in the Provincial Legislative List; and no new items for insertion in the Provincial Legislative List. (Paras 31—33)*

(5) The Centre to retain the whole of the net proceeds of the following taxes, *viz*., (a) Duties of Customs including Export Duties; (b) tax on capital value of assets, etc.; (c) taxes on Railway fares and freights; and (d) Central Excises other than on tobacco. (Para 34)*

(6) The grant of fixed assignments for a period of years to the jute-growing provinces to make up for their loss of revenue. (Paras 35-36)*

(7) The net proceeds of the following taxes to be shared with the Provincial Governments, *viz*. (1) Income-tax, including Corporation Tax; (2) Central Excise on Tobacco; (3) Estate and Succession Duties. (Paras 38—42)*

(8) The suggestion that the Centre should be allotted only the excises on specified commodities, not accepted (Para 41)*

(9) Federal Stamp Duties and Terminal taxes on goods etc., to be administered centrally, but wholly for the benefit of the provinces. (Paras 43 and 44)*

(10) Larger fixed subventions than now, necessary for Assam and Orissa, and subventions for limited periods for East Punjab and West Bengal, but no precise figures recommended for lack of data. (Paras 45 and 46)*

(11) Grants-in-aid on the Australian model not favoured. (Para 48)*

(12) Merging the tax on agricultural income in the Central Income-tax and similarly the Estate and Succession Duties on agricultural property in the similar duties on property in general to be examined in consultation with Provincial Governments and transfers made from the Provincial List of subjects, if necessary. (Para 49)*

(13) Not less than 60 per cent of the net proceeds of Income-tax, including Corporation Tax and the tax on Federal emoluments, to be divided between Provinces in the following manner:—

20 per cent on the basis of population, 35 per cent on the basis of collection and 5 per cent as an adjusting factor to mitigate hardship. (Paras 55 and 56)*

(14) Not less than 50 per cent of the net proceeds of the excise on tobacco to be divided between Provinces on the basis of estimated consumption. (Para 57)*

(15) Not less than 60 per cent. of the net proceeds from Succession and Estate Duties to be divided between the Provinces on the following basis:— Duties in

* Reference to paras are to paras in the original reports.

respect of real property on the basis of allocation of the property, and of the balance, three-fourths on the basis of the residence of the deceased and one-fourth on the basis of population. (Para 58)*

(16) Net effect of the recommendations, to transfer annually a sum of the order of Rs. 30 crores from the Centre to the Provinces. (Para 59)*

(17) A Finance Commission with a High Court Judge or ex-High Court Judge as Chairman and four other members to be entrusted with the following functions:—*viz.* (a) allocation between the Provinces of their shares of centrally administered taxes assigned to them; (b) to consider applications for grants-in-aid for Provinces and report thereon; (c) to consider and report on other matters referred to it by the President. (Paras 66-67)*

(18) The Commission to review the position every five years, or, in special circumstances, earlier. (Para 70)*

(19) A tax levied by the Centre under its residuary powers, not to ensure to the benefit of a non-acceding State unless it agrees to accede to the Centre in respect of that subject. (Para 72)*

(20) Trading operations of Unit, as also of Local Bodies, whether carried on within or without their jurisdiction, to be liable to Central Income-tax or a contribution in lieu, but quasi-trading operations incidental to the normal functions of Government not to be taxed. (Para 74)*

(21) The President to be empowered in an emergency to suspend or vary the normal financial provisions in the Constitution. (Para 75)*

(22) A few minor changes suggested in regard to the procedure in financial matters. (Para 77)*

(23) No change to be made in respect of borrowing powers of Units. — (Paras 81-82)*

(24) Early arrangement to be made for the preparation of regular budgets and the maintenance of appropriate accounts and audit by all acceding States. (Para 86)*

(25) States gradually to develop all the taxes in the Provincial Legislative List and correspondingly give up taxes in the Federal List. (Para 87)

(26) Maritime customs and excises in States to be taken over by the Centre, the States being compensated therefor if necessary. (Paras 89 and 90)*

(27) The Indian Income-tax Act to be applied to all the federating States, and 75 per cent of the net proceeds attributable to the States to be divided between them. (Para 91)*

(28) A States Commission to be set up with five members with wide knowledge of the financial administration of Provincial, Federal or State Governments. (Para 94)*

(29) The States Commission to examine the privileges and immunities etc. of States and to suggest suitable compensation for the extinction of these rights and liabilities. (Para 94)*

(30) States which do not come into the arrangements to pay a contribution to the Centre to be determined by the States Commission. (Para 95)*

(31) The interim Constitutional arrangements with the States to be flexible and small States to be grouped together. (Paras 96 and 97)*

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* Reference to paras are to paras in the original reports.

Conclusion

101. Some of our recommendations would need to be embodied in the Constitution while others would be given effect to by the order of the President. We have attempted a draft of the necessary provisions in the Constitution to give effect to the former; and these are set out in Appendix VI.*

102. Mr. Rangachari has signed this report in his personal capacity, and the views expressed in it should not be treated as committing in any manner the Ministry of Finance of which he is an officer.

NALINI RANJAN SARKER,
V. S. SUNDARAM,
M. V. RANGACHARI.

NEW DELHI:
5th December 1947.

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* Reference to paras are to paras in the original reports.

[Annexure I] APPENDIX B

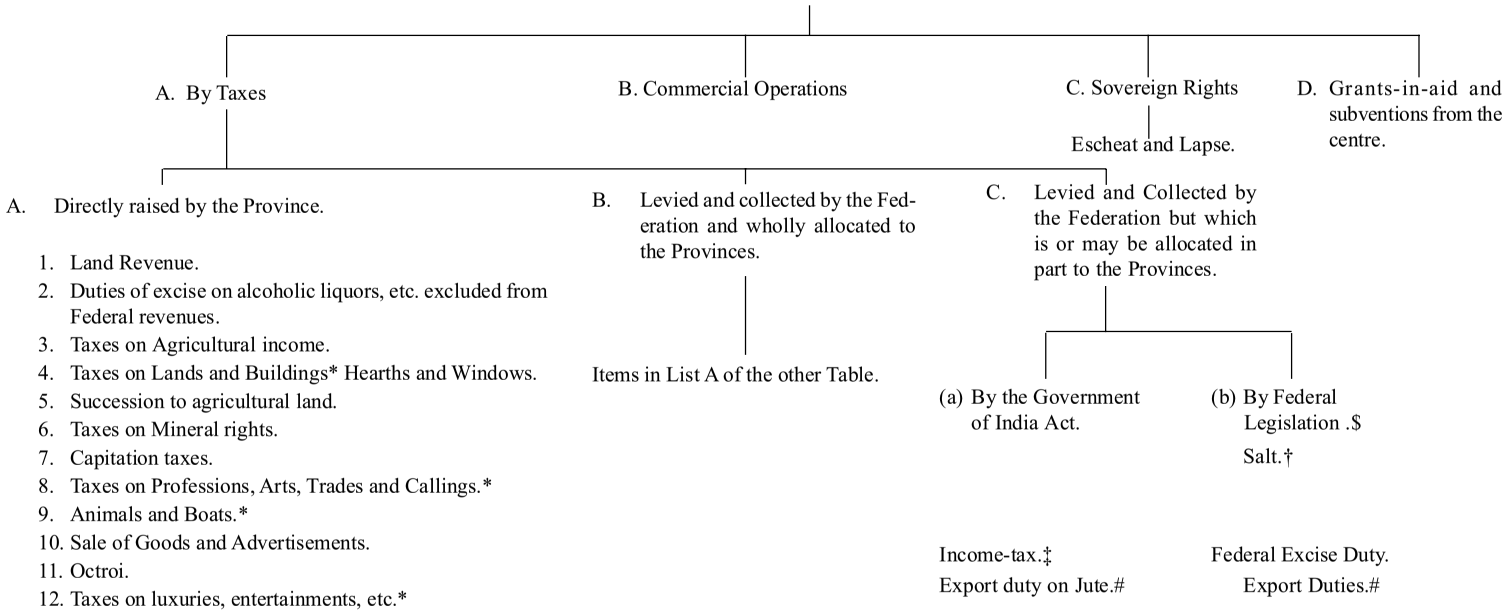
CONSTITUTIONAL POSITION OF THE CENTRE AND THE PROVINCES IN RESPECT OF REVENUE UNDER THE GOVERNMENT OF INDIA ACT, 1935

(a) Revenue of the Federation

(1) From Taxes			(2) From Commercial Operations	(3) Sovereign Functions	(4) Contributions from States—Assigned by His Majesty
A. Levied and collected by the Federation but belonging wholly to the Provinces or Units. 1. Duties on Succession to property other than agricultural land.* 2. Stamp Duties on Bills of Exchange, Cheques, Promotes, Bills of Lading, Letters of Credit, Policies of Insurance, Proxies and Receipts.† 3. Terminal Taxes on goods or passengers carried by Railway or air.‡ 4. Taxes on Railway fares and freights.* (Subject to the right of the Federation to raise Federal Revenue by a surcharge on all the items in this list).	B. Levied and collected by the Federal Government of which a portion is or may be assigned to the Provinces. a. Assigned by the Act. 1. Income-tax other than Corporation Tax, (Subject to Federal Surcharge).† 2. Jute Export Duty.†	b. May be assigned by Federal Law. 1. Duty on Salt. 2. Other duties of Excise on Tobacco and on other Goods manufactured or produced in India except. (a) alcoholic liquor for human consumption. (b) Opium, hemp, and other narcotics and non-narcotic drugs. (c) Medicinal and toilet preparations.# 3. Duties of Export.%	C. Levied and collected by Federation and, belonging wholly to the Federation. 1. Taxes in Lists A & B in areas administered by the Federal Government. 2. Customs. 3. Corporation Tax. 4. Sucharges mentioned in Lists A & B. 5. Taxes on capital values of assets of individuals and companies. 6. Miscellaneous receipts from fees in respect of matters in Federal List (including fees taken in the Federal Court).	1. Posts and Telegraph. 2. Federal Railways. 3. Banking. 4. Other Commercial Operations.	1. Coinage and Currency. 2. Escheat and lapse in areas administered by Federal Government.	Tributes and other payments.

*Not yet levied.
†These duties continue to be both levied and collected by the Provinces.
‡Levied so far only for the benefit of local bodies.
§Duty now abolished.
#See notes under the other Table.
%No share assigned to Provinces.

(b) Revenue of the Province



These taxes are now raised by Municipal and other Local authorities for their needs. †Now abolished—but before abolition was a source of Municipal Taxation.

By order in Council 50% of the net proceeds of tax on income other than Corporation tax exclusive of proceeds attributable to Chief Commissioners Provinces and taxes in respect of Federal emoluments are distributable in accordance with a prescribed ratio.

#$62^1/_2$ assigned to Provinces by Order in Council distributed among jute producing Provinces in proportion to the respective amounts of Jute grown in them.

$Duty abolished. #No share allotted to Provinces.

[Annexure II] APPENDIX B

FINANCIAL POSITION OF THE PROVINCES AND THE CENTRE FROM 1937-38 TO 1946-47

(a) Provinces

(in lakhs of Rupees)

Province	Provinicial Revenue	Devolution Grants from the Centre including Dev. Grants	Total Revenue	Total Revenue Expenditure	Cumulative Deficit(—) Surplus(+)	Balances in Reserve Funds on 31st Mar. 1947	Closing balance on 31st Mar. 1947
Madras	2,63,27	24,12	2,87,39	2,84,22	+ 3,17	29,18	- 56
Bombay	1,92,52	26,51	2,19,03	2,06,69	+ 12,34	17,07	42
Bengal	1,65,35 *	69,92	2,35,27	2,51,13 *	- 15,86	25	2,48
United Provinces	1,79,33	26,77	2,06,10	2,04,99	+ 1,11	17,31	6,43
Punjab	1,84,12	11,51	1,95,63	1,60,46	+ 35,17	6,79	57
Bihar	75,06	51,10	90,16	81,81	+ 8,35	7,78	1,07
C.P. & Berar	63,61	7,69	71,30	70,661	+ 64	8,14	2,41
Assam	35,54	7,89	43,43	42,89	+ 54	1,02	1,54
N.W.F.P	11,94	11,55	23,49	22,95	+ 54	15	63
Orissa	17,71	7,93	25,64	25,11	+ 53	10	60
Sind	55,19	10,27 †	65,46	60,04	+ 5,42	8,14	8

* Subsidy of 3,00 in 1943-44 taken by Bengal as reduction of expenditure on Famine. Hence Revenue and Expenditure both have been increased by 3,00.

† The Subvention was capitalised on 1st April 1944 and the value set off against the Lloyd Barrage Debt.

Revised Estimates have generally been taken for 1946-47.

(b) Central Government (1937-38 to 1946-47)

(In lakhs of Rupees)

Year	Revenue	Expenditure			Deficit(—) Surplus (+)
		Civil	Defence	Total	
1937 - 38	86,61	39,39	47,22	86,61	—
1938 - 39	84,52	38,97	46,18	85,15	—63
1939 - 40	94,57	45,03	49,54	94,57	—
1940 - 41	1,07,65	40,57	73,61	1,14,18	—6,53
1941 - 42	1,34,57	43,33	1,03,93	1,47,26	—12,69
1942 - 43	1,77,12	74,28	2,14,62	2,88,90	—1,11,78
1943 - 44	2,49,95	81,44	3,58,40	4,39,84	—1,89,89
1944 - 45	3,35,71	1,00,77	3,95,49	4,96,26	—1,60,55
1945 - 46	3,61,18	1,24,38	3,60,23	4,84,61	—1,23,43
1946 - 47(Revised Estimate)	3,36,19	1,43,36	2,38,11	3,81,47	—45,28
TOTAL	19,68,07	7,31,52	18,87,33	26,18,85	—6,50,78

The amounts included in the above on account of revenue assigned to the Provinces and Grants-in-aid and Subventions to them are given below :—

(In lakhs of Rupees)

Year	Share of Jute Export duty	Share of Income-tax	Grants-in aid and Subventions
1937 - 38	2,65	1,25	3,14
1938 - 39	2,51	1,50	3,05
1939 - 40	2,56	2,79	3,04
1940 - 41	1,85	4,16	3,04
1941 - 42	1,95	7,39	3,03
1942 - 43	1,40	10,90	2,76
1943 - 44	1,38	19,50	5,75 (a)
1944 - 45	1,49	26,56	8,70 (b)
1945 - 46	1,57	28,75	9,70 (c)
1946 - 47 (Revised Estimate)	2,80	29,87	1,70
TOTAL	20,16	1,32,67	43,91(d)

(a) Includes 3,00 Special Grant to Bengal. (b) Includes 7,00 Special Grant to Bengal.

(c) Includes 8,00 Special Grant to Bengal .(d) Includes 7 roundly in all for Coorg.

[Annexure III] APPENDIX B

SUMMARY OF PROVINCIAL SUGGESTIONS

PART I — TAXES

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
1. Income tax (other than on agricultural income). [Sec. 138 of the Government of India Act, 1935 and item 54 in Federal Legislative List.]	A maximum of 50% of the net proceeds to be distributed among provinces.	Madras	A minimum of 50% of net proceeds.
		Bombay	75% of income tax and corporation tax receipts for provinces or 75% of the corporation income and super taxes paid by residents in a province to be earmarked for that province. From the divisible pool from corporation and income tax 33 1/3 % should be allotted to Bombay which is the largest single contributor to the revenue.
		U.P.	50% for provinces on population basis.
		C.P.	75% Tax on Agricultural income also should be collected by centre.
		West Bengal	60 % to be distributed in propotion to the collection of these taxes in provinces.
		Bihar	Even on the basis of population Bihar should have received 17 crores as against 13 allotted. In future none of the poorer provinces should get an amount lower that that payable on the basis of population. The distribution should be governed not by residence of the assessees but by the place where the income is earned. The basic factors must be population and the place where the income is earned. If any modifications are to be made they must be done with the object of assisting the financially poorer provinces among which Bihar is at the very bottom.
		Orissa	Distribution of 50 % may continue as at present but the percentages should be revised taking into consideration the factor also of the state of development in addition to those of population and residence used by Sir Otto. Due weightage to be given to undeveloped provinces. Should the provincial share exceed 12 crores, 75 % of the exceeds may be left to the discretion of the Central Government.

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
		East Punjab	After the partition the East Punjab Province faces a deficit of about 3 crores : its share of income tax proceeds should be very appreciably increased to meet the deficit fully.
		Assam	75 % . There should be a drastic revision of the shares of provinces in income tax receipts having regard to the facts that Sind and N.W.F.P. go out that the amounts now available in the divisible pool have enormously exceeded the original estimate and some provinces are now getting , as a result income tax amounts exceeding the entire revenues of some others.
2. Corporation Tax. [Items 46 in Federal Leg. List]	Wholly Federal	Madras	At least 50 % of the net proceed to go to provinces.
		Bombay	75 % for provinces.
		U.P.	50 % for provinces on population basis.
		C.P.	C.P. suggests the inclusion of Corporation tax and taxes on Capital and Capital assets in taxes on income for distribution.
3. Central Excise duties on tobacco and other goods except alcoholic liquors. (item 46)	There is provision for sharing in full for in part [Sec. 140 (1)] but not so far shared.	Madras	Should be entirely provincialized.
		Bombay	Should be provincialized or not less than 50 % of the net proceeds on each producing unit to be allotted to that unit.
		U.P.	Should be entirely provincialized and distributed on population basis.
		C.P.	Should be provincialized or 75 % should be allotted to provinces. The duties should cover some more articles such as rubber goods, papers etc.
		West Bengal	25 % of the federal excise should be allocated to provinces .
		Bihar	A portion of the duty should be distributed on the basis of the yields in different provinces.
		Orissa	A portion may be distributed to provinces gradually particularly as the provinces are now faced with the loss of their excise revenue.
		Assam	At least 75 % of the excise duty collected on her oil should be allotted to Assam. Atleast 50 % of the other excise duties (Sugar, Steel, Matches, Tobacco and Beetle Nuts) to be given to the producing units on a

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
			formula combining factors of province of production, size of population and level of revenue expenditure.
4. Export Duties on Jute and Jute products.	$62^{1}/_{2}$ percent of net proceeds [Section 140 (2)]	West Bengal	75 % should accrue to the provinces growing and manufacturing jute.
		Bihar	The entire net proceeds of the jute producing provinces should be distributed proportionately among the concerned provinces.
5. Export Duties .		Madras	At least 50 % of net proceeds of all export duties should be distributed to provinces according to principles formulated by Federal Legislature. Analogy of jute duty arrangement cited.
		Bombay	50 % of net proceeds.
		U.P.	All export duties should be entirely provincialized and distributed on population basis.
		C.P.	Export duty on minerals (coal and manganese etc.) should be allotted to C.P. (jute analogy)
		West Bengal	25 % of net proceeds of export duties other than jute.
		Orissa	A portion may be distributed to provinces gradually particularly as the provinces are now faced with the loss of their excise revenue.
		Assam	At least 75 % of the sale proceeds of export duty realised on her tea.
6. Succession duties, Federal Stamp duties, Terminal Taxes (Railway & Air), Taxes on Railway Fares & Freights.	Provided for full distribution to provinces. (Sec. 137)	Madras	It should be provided that the net proceeds shall not form part of the Revenues of the Federation but shall be distributed to the provinces according to principles formulated by the Federation.
		U.P.	The provisions should be fully utilized to augment the resources of provinces.
		C.P.	Succession duties in respect also of agricultural land should be transferred from the provincial to the Federal list. The duty should be on *ad valorem* basis.
		West Bengal	The provincial governments should be empowered to levy them if the Central Government do not levy them.

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
1	2	3	4
		Assam	50 percent of income from increase in railway fares and freights above the levels determined by the Railway Budget of February 1947 to go to provinces on population ratios weighted by a given factor in favour of provinces with smaller revenues and expenditure.
7. State Lotteries	Federal (item 48 Federal List).	C.P.	Should be transferred to Provincial list.
8. Taxes on trades, professions, callings and employment.	Provincial tax Sec. 142-A, Item 46 in Provincial list.		The limit of Rs. 50 p.a. should be removed and gradation according to capacity should be provided for.
9. Taxes on sales and advertisements.	(Item 48 in Provincial list)		Sales tax should be levied in all provinces and acceding states.

PART II — NON TAX PROPOSALS

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
1	2	3	4
		U.P.	(1) The inequity of Niemeyer Award should be rectified and the central allocation for U.P. should aim at a minimum of 6 or 7 crores p.a. going upto 12 or 13 crores in the space of 10 years. (2) The consolidated debt due from the U.P. to the Govt. of India should be wiped off. (3) The Govt. of India should share losses on the foodgrains scheme as originally promised by them.
		C.P.	A system of central grants derived after taking into account such factors as natural resources, stage of industrial development, taxable capacity, etc. is essential. An expert financial enquiry should be undertaken.
		West Bengal	(1) Provision for federal aid to provinces for social and amelioration work. (2) There should be financial commission on the lines of the Commonwealth Grants Commission in Australia.
		Bihar	If any grants-in-aid or subventions are given in future the per capita revenue and expenditure in each province during the last ten years should be kept in mind. Those with low *per capita* revenue and expenditure should be given greater assistance than the richer.

Tax	Assignment existing or contemplated	Provinces proposing	Assignment proposed for provinces
1	2	3	4
		Orissa	The broad lines of the present allocation may be maintained in the new Constitution; but the subvention of 40 lakhs fixed for the province should be increased; it should be stated as a percentage of the revenues of the central govt. and in any case there should be a minimum annual subvention of 150 lakhs. Enforcement of the policy of prohibition and judicial panchayats will make the provincial administration impossible unless the central government multiplies its grants and subventions very liberally. Abolition of the Zamindari system would seriously affect Land Revenue and stamps. Make every one pay according to his capacity. Provide for a well regularised house tax on a provincial scale; a tax on passengers. Nationalization of industry will wash away the twin anchor sheets of Central finance—Income tax and Customs.
		East Punjab	(1) Particularly as the East Punjab is now to be the frontier of the Indian Dominion, there is a strong case for a recurring subvention of more than 1 crore for it (N.W.F.P used to get 1 crore). (2) A non-recurring subvention for the capital of the province. (Orissa was given such a grant).
		Assam	There is an obvious case for an upward revision of the subventions granted to Orissa and Assam. Assam as a frontier as well as a backward province of India deserves special treatment. Its royalty of 5 percent on oil (as against 10 times that amount of central excise) is unfair. Large amounts of income accrue in Assam but are assessed in Calcutta which is headquarters of the concerned companies . Some provinces like Bombay and Bengal have been allowed to get a large share of increase tax receipts because of their claim to be territorially responsible for the production of the incomes. Assam is entitled to similar consideration in regard to certain items of central revenues.

[Annexure IV] APPENDIX B

RIGHTS AND IMMUNITIES ENJOYED BY THE STATES

(A) Annual Value of the immunities enjoyed by the States under Sea Customs, Currency and Coinage

State	Year to which the figures relate	Rs. in lakhs	Remarks (see footnote)
(i) Sea Customs			
Kutch	1945-46	21.18	(1)
Bhavnagar	1945-46	.19	(2)
Morvi	1945-46	6.80	(3)
Junagadh (excluding Mangrol)	1945-46	12.65	(3)
Nawanagar	1945-46	15.27	(3)
Porbandar	1945-46	3.63	(3)
Cambay	1945-46	2.00	(4)
Baroda	1943-44	22.98	(5)
Janjira	1945-46	3.00	(6)
Cochin	1944-45	22.70	(7)
Travancore	1944-45	17.99	(7)
Sawantwadi	1944-45	0.12	(8)
Mangrol	1944-45	2.33	(9)
Kashmir	1945-46	11.00	(10)
(ii) Currency and Coinage			
Hyderabad	1945-46	105.55	

(6th October 1945—5th October 1946)

(1) In connection with Federation, the proposed method of calculating the immunity in the case of Kutch was as follows:—

To the trade figures supplied by the State the British Indian tariff rates should be applied and from this total should be deducted the difference between the duty calculated at British Indian tariff rates and that actually collected at State rates on goods not consumed in the State itself.

As the figures necessary to apply this formula are not available the figure given in the statement represents simply the amounts of customs duty retained by the State in 1945-46.

(2) The value of the immunity in the case of Bhavnagar is the total of customs collections made and retained by the State. The figures for 1945-46 is abnormal.

The figures for 1930-31 to 1935-36 were as follows:—

Year	Rs.
1930-31	51,02,974
1931-32	75,91,016
1932-33	81,93,368
1933-34	99,32,628
1934-35	1,21,55,668
1935-36	61,62,300

(B) Note prepared by the Ministry of States on excise arrangements with Indian States

Matches.—In respect of match excise there is a pooling arrangement with the States. The main principal is that the whole of the proceeds of the tax collected in any State are made over to the general pool and the whole proceeds of the pool divided between British India on the one hand and the various States that agree to come into the pool on the other on the basis of population, regardless of whether matches are manufactured or not, in the States. Import of matches from the States that have not joined this arrangement, is prohibited. The conditions that a State is required to accept for admission to the pool are—

(a) The State should levy duty on matches produced in their territories by means of British Indian banderols and pay the proceeds into the common pool.

(b) The British Indian procedure for the levy and collection of duty should be followed.

Licence fees and fines are not included in the pool. Deduction on account of collection-charges at a uniform rate is allowed. The present rate is 3 per cent of the net collections. The total net revenue is distributed among the various States and British India on the basis of population. While the amount contributed by States during 1944-45 to the pool was Rs. 44,38,970 the amount actually paid to the States was Rs. 1,00,66,875. The British Indian realisation was Rs. 5,46,26,781.

* * * * * *

3. **Sugar.**—Arrangements were made in 1934 with the sugar producing States whereby they were required to levy the same rates of excise and under

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(3) The value of the immunity in these cases is represented by the total customs collections less the amount payable to the Central Government under the Agreements.

(4) By the agreement of 1938 Cambay is allowed to retain whichever is greater of the following two amounts:—

(i) Rs. 2 lakhs; or

(ii) a proportion of the customs duties collected at the State ports on the basis of population with suitable adjustments to correct difference between the proportion of the urban population to the rural population in the State and the whole of India respectively.

Since the net customs revenue collected by the State during 1945-46 was only Rs. 6,993/- the State was entitled to receive from the Central Government difference between that figure and Rs. 2 lakhs. The immunity in this case is therefore Rs. 2 lakhs.

(5) Baroda is entitled to retain all the duty collected by it up to a maximum of 1 per cent. of the average customs revenue of British India and until this maximum is reached the immunity is represented by the State's collections. The latest figures available are given here.

(6) Annual payment under the 1940 Agreement, which represents the State's immunity.

(7) The immunity of Travancore and Cochin is represented by their share of the pool reduced by the collection of duty at the British port of Cochin, at Cochin ports and Travancore backwaters. In addition it is necessary to include for Travancore the annual collections of customs duty at their ports other than the backwater ports; and in respect of commodities such as tobacco, on which Travancore levies duty at rates other than British Indian rates, the amount of duty at those rates is substituted for the actual collections.

(8) The immunity is represented by the compensation payment of Rs. 13,433 less Rs. 1,700 allotted for abolition of land-customs under the Agreement of 1838.

(9) Actual amount collected and retained by the State.

(10) Drawback from customs on goods imported by sea through British India.

the same conditions as in force in British India in return for which sugar produced in Indian States was to be admitted free to British India. Soon after the outbreak of war, arrangements were made with the major sugar producing States, whereby in addition to compliance with the 1934 arrangements, these States undertook to hand over to the Central Government the excess of their earnings from sugar excise in any year above the highest revenue derived from the sugar excise in any of the three years preceding 1939-40. As regards States which had not till the developed a degree of production materially in excess of their own consumption and States which had not commenced production, the Residents were asked to watch and report developments. All producing States were, however, requested to levy the same duty as in British India. In the case of such States where production now exceeds consumption, the arrangement is that the State retains duty on the basis of population at the rate of Rs. 3/20 per capita revenue.

The sugar producing States are—

A	B
Mysore	Baroda
Phaltan	Hyderabad
Kolhapur	Udaipur
Kapurthala	Gwalior
Rampur	Aundh
Jaora	Nabha
Bhopal	Kashmir
Sangli	
Miraj	

The States falling in category A above produce sugar in excess of their requirements and those falling in category B less than their requirements. Of the first mentioned States, negotiations were satisfactorily concluded with the first five. Bhopal which is surrounded on three sides and Jaora which is surrounded on all sides by Indian States, taking full advantage of their geographical position did not accept the settlement at first. Jaora, however, agreed to surrender its surplus revenue from 1942-43. Sangli and Miraj States only recently developed their sugar factories and have agreed to surrender the surplus revenue on the basis of the formula at 'A' above but have protested for revision of the arbitrary figure of actual consumption represented by 3/20ths. The matter is under consideration.

The amount retainable by Indian States and the average duty collected are as follows:—

Name of State	Amount retainable	Average Collection
	(Rs.)	(Rs. in lakhs)
Mysore	12,91,135	17
Kapurthala	2,52,000	8
Kolhapur	2,33,592	4
Rampur	11,43,532	16
Phaltan	5,21,262	
Sangli	44,007	Not known
Miraj	6,944	Not known

Following is the contribution by the above States to the Central Exchequer in respect of the year 1945-46—

	Rs.
Mysore	—
Kapurthala	6,47,368
Kolhapur	2,26,820
Rampur	—
Phaltan	1,40,585
Sangli	1,07,869
Miraj	59,268

Information regarding the amount to be surrendered by Mysore and Rampur is still awaited.

* * * * *

7. **Tobacco.**—All States are expected to levy the British Indian rate of duty. (Some States where production is not of much consequence levy excise on the basis of acreage in view of the high cost of administration.) The States are entitled to retain the proceeds of the excise duty subject to the limit, on the basis of their population, worked out in accordance with the following formula—

$$A = \frac{R \times P}{P}$$

Where A is the limit retainable by a State;

R = the total net revenue in any year calculated from 1st April to 31st March, collected in British India and all the participating States (*i.e.,* the gross revenue less the cost of collection, licence fees, penalties, fines etc.);

p = the population of the State concerned;

P = the population of British India and all the participating States.

Some States have not come into the scheme and the tobacco of such States on entry into British India is confiscated and released on payment of fine and penalty. Although section 5 of the Central Excises and Salt Act 1944 empowers us to impose customs duty equivalent to the excise duty, the provisions of this section have not been involved because it has been possible to realise an amount equivalent to the excise duty on State Tobacco under rule 32 of the Central Excise Rules by means of confiscation. Hyderabad has not accepted the formula and does not share the revenue with the Government of India although it has legislated on the lines of British India. No restrictions have been imposed on the entry of Hyderabad Tobacco into British India.

To facilitate movement of tobacco from and to the States, a special procedure for the movement in bond has been devised. Under this procedure the duty is realised at destination and credited to a Suspense account. The amounts realised on the State tobacco is at the end of the year credited to the State and is taken into account in the State's realisations for purposes of the formula. The revenue contributable by the States during the years 1943-44 and 1944-45 were Rs. 51,38,809 and Rs. 1,48,07,552 respectively.

8. **Vegetable Product.**—The formula is the same as in respect of tobacco. The only States concerned at present are Mysore and Cochin although the other States were asked to legislate and have legislated on the matter. Of the two States, namely, Cochin and Mysore, Cochin's contribution to the Central Revenues during the year 1943-44 and 1944-45 was Rs. 76,160 and Rs. 41,212 respectively. The Mysore State has nothing to pay under the formula.

9. **Tea, Coffee and Betel Nuts.** — The States concerned are:—

Tea:—Mysore, Travancore, Cochin, Tripura, Mandi;

Coffee:—Mysore, Travancore, Cochin;

Betel Nuts:—Mysore, Travancore, Cochin, Tripura, Sawantwadi and Janjira. The rates of duty imposed by Travancore are as follows:—

Betel Nut	As. 1/6 per 1b.
Coffee	As. -/6 „ „
Tea	As. 1/9 „ „

The same formula as in respect of tobacco has been adopted in respect of these excises also, although the Board's intention was that 'P' in respect of these excises should denote the population of all India and not limited to participating States and British India as in the case of tobacco. Mysore and Travancore, the two important States, have been clamouring for a revision of the formula. In the case of Travancore the following revised formula has been offered:—

$$A = \frac{P}{T}$$

Where A denotes per capita consumption figure;

T = the total quantity of the article taxed in British India and in other participating units;

P = the total population of British India and other participating States.

On the basis of the per capita consumption figure worked out, the amount retainable by the State will be worked on the basis of the following formula:—

$$A = a \times d \times p$$

Where A = amount retainable by the State;

a = per capita consumption figure of British India and the participating units;

d = rate of excise duty levied by the State;

p = Population of Travancore.

The excess over 'A' plus cost of collection will have to be surrendered by the State. The State's acceptance of the formula has not yet been received.

In the case of Mysore, we have agreed in respect of coffee that the amount retainable by the State may be determined on the basis of the Coffee Controller's statistics of coffee consumption in the State. Mysore has accepted this formula and is pressing for a similar formula in respect of betel nuts. After a recent tour, the Board has stated that after the establishment of the betel nut Marketing Board, it may be possible to adopt the coffee formula in respect of betel also.

(C) Statement showing the value of service postage stamps supplied annually free to States

Sl.No.	Name of State	Value
		Rs.
1.	Alwar	30,000
2.	Baroda	1,25,000
3.	Bharatpur	12,000
4.	Bhopal	8,380
5.	Bikaner	37,000
6.	Bushahr	600

Sl. No.	Name of State	Value
		Rs.
7.	Cooch Behar	9,000
8.	Datia	5,000
9.	Dhar	3,000
10.	Faridkot	1,000
11.	Gwalior	480
12.	Idar	550
13.	Indore	35,000
14.	Jhalawar	.2,400
15.	Jubbal	250
16.	Kalsia	.450
17.	Kashmir	20,000
18.	Kotah	15,000
19.	Loharu	300
20.	Malerkotla	900
21.	Mandi	700
22.	Marwar	39,000
23.	Panna	900
24.	Sikkim	1,500
25.	Sirmoor	1,275
26.	Suket	700

(D) Statement showing the values of immunities granted annually to Indian States in the shape of free conveyance of their official correspondence within the States limits

Name of the State	Value of the immunity	Remarks
	Rs.	
(1) Mysore	21,38,182	
(2) Hyderabad	5,440	Combined figures for the portions of the State in the Madras and Bombay Circles.
(3) Banganapalle	365	
(4) Pudukottai	37,960	
(5) Baroda	14,705	
(6) Bhor	68	
(7) Jawhar	3,627	
(8) Bhopal	49,177	
(9) Rewah	1,72,380	

(E) Statement showing the amounts of telephone revenue accruing in India on behalf of Indian States and vice versa

Amount of revenue accruing in India on behalf of States

	1944-45	1945-46	1946-47
	Rs.	Rs.	Rs.
1. Kashmir	1,912 3 0	2,731 3 0	1,646 13 0
2. Jammu Tawi	3,880 0 0	4,475 5 0	4,005 4 0

Amount of revenue accruing in India on behalf of India

	1944-45	1945-46	1946-47
	Rs.	Rs.	Rs.
1. Kashmir	1,702 5 0	2,375 1 0	1,187 7 0
2. Jammu Tawi	3,608 1 0	4,133 12 0	1,501 3 0

APPENDIX B

[Annexure V]

STATEMENT SHOWING REVENUE AND THE PERCENTAGE OF LAND CUSTOMS INCLUDED IN THE REVENUE OF CERTAIN STATES

(In lakhs of Rupees)

Sl. No.	Name of State	Total Revenue (Ordinary)	Land Customs	Percentage	Remarks
1.	Hyderabad	943	124	13.2	
2.	Travancore	611	89	14.6	
3.	Kashmir	557	117	21.0	
4.	Gwalior	303	41	13.5	
5.	Jaipur	197	23	11.6	
6.	Baroda	434	20*	4.6	*Includes Sea Customs, figures of which are not separately available.
7.	Jodhpur	224	40	17.8	
8.	Udaipur (Mewar)	81	1	1.3	
9.	Indore	305	27	8.9	
10.	Bikaner	252	29	11.5	
11.	Alwar	90	44	48.9	
12.	Bhopal	124	20	16.1	
13.	Kotah	48	6	12.5	
14.	Tehri-Garhwal	23	4 †	17.4	†Includes Excise also.
15.	Bharatpur	65	23	35.4	
16.	Cutch	89	1	1.1	
17.	Patna	30	6	20.0	
18.	Sarguja	17	5	29.4	
19.	Nawanagar	110	19††	17.3	††Includes Sea Customs, figures of which are not separately available.
20.	Tonk	34	11	32.3	
21.	Bundi	29	8	27.6	
22.	Sirohi	21	4	19.0	
23.	Dungarpur	22	8	36.4	
24.	Banswara	13	3	23.1	
25.	Partabgarh	8	3	37.5	
26.	Jhalawar	7	1	14.3	
27.	Jaisalmer	6	3	50.0	
28.	Shahpura	4	1	25.0	
29.	Danta	3	1	33.3	
30.	Paladpur	28	5	17.9	
31.	Idar	45	17	37.8	
32.	Balasinor	5	1	20.0	
33.	Lunawada	10	2	20.0	
34.	Sant	12	2	16.7	
35.	Chhota Udaipur	24	2	8.3	
36.	Radhanpur	23	4	17.4	
37.	Baria	18	1	5.6	
38.	Dewas (Junior)	23	4	17.4	
39.	Panna	10	1£	10.0	£ Includes Tributes&C.
40.	Rattam	17	6	35.3	
41.	Alirajpur	6	1&	16.7	&Includes Sayar.
42.	Bijawar	7	1&	14.3	&Includes Biyai.
43.	Chhatarpur	4	2	40.0	
44.	Barwani	12	2	16.6	
45.	Jaora	22	3	13.6	
46.	Rajgarh	12	1	8.3	
47.	Sailana	6	1	16.6	
48.	Jhabua	13	4	30.8	

APPENDIX B

[Annexure VI]

AMENDMENTS RECOMMENDED IN THE DRAFT CONSTITUTION
Provisions relating to procedure in financial matters

Clause 75.—To clause 75 *add* the following, namely:—

"(4) There shall be endorsed on every Money Bill when it is transmitted to the Council of States under Section 74, and when it is presented to the President for assent under section 76, the certificate of the Speaker of the House of the People signed by him that it is a Money Bill."

Clause 79. —In sub-clause (3) of clause 79, for the words "succeeding section" *substitute* the words "two succeeding sections".

New clause 80-A.—After clause 80, *insert* the following new clause namely—

"80-A. *Excess grants*—If in any financial year expenditure from the revenues of the Federation has been incurred on any service for which the vote of the House of the People is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the House of the People and the provisions of sections 78 and 79 shall have effect in relation to such demand as they have effect in relation to a demand for a grant."

Clause 145.—For sub-clause (1) of clause 145, *substitute* the following namely:—

"(1) Subject to the special provisions of this Part of this Constitution with respect to Money Bills, a Bill may originate in either House of the Legislature of a Province which has a Legislative Council.

(1a) Subject to the provisions of sections 146 and 146-A, a Bill shall not be deemed to have been passed by the Houses of the Legislature of a Province having a Legislative Council unless it has been agreed to by both Houses either without amendments or with such amendments only as are agreed to by both Houses."

Clause 146.—For clause 146, *substitute* the following, namely:—

"146. Passing of Bills other than Money Bills in Provinces having Legislative Councils.—(1) If a Bill which has been passed by the Legislative Assembly of a Province having a Legislative Council and transmitted to the Legislative Council is not, before the expiration of twelve months from its reception by the Council, presented to the Governor for his assent, the Governor may summon the Houses to meet in a joint sitting for the purpose of deliberating and voting on the Bill:

Provided that nothing in this section shall apply to a Money Bill.

(2) If at a joint sitting of the two Houses summoned in accordance with the provisions of this section the Bill, with such amendments, if any, as are agreed to in joint sitting is passed by a majority of the total number of members of both Houses present and voting, it shall be deemed for the purposes of this Constitution to have been passed by both Houses:

Provided that at a joint sitting:—

(a) unless the Bill has been passed by the Legislative Council with amendments and returned to the Legislative Assembly, no amendments shall be proposed to the Bill other than such amendments, if any, as are made necessary by the delay in the passage of the Bill;

(b) if the Bill has been so passed and returned by the Legislative Council, only such amendments as aforesaid shall be proposed in the Bill and such other amendments as are relevant to the matters with respect to which the Houses have not agreed, and the decision of the person presiding as to the amendments which are admissible under this sub-section shall be final."

New clauses 146-A and 146-B.—After clause 146, *insert* the following clauses, namely:—

"146-A. Special provisions in respect of Money Bills.—(1) A Money Bill shall not be introduced in a Legislative Council.

(2) After a Money Bill has been passed by the Legislative Assembly of a Province having a Legislative Council it shall be transmitted to the legislative Council for its recommendations, and the Legislative Council shall within a period of thirty days from the date of its receipt of the Bill return the Bill to the Legislative Assembly with its recommendations, and the Legislative Assembly may thereupon either accept or reject all or any of the recommendations of Legislative Council.

(3) If the Legislative Assembly accepts any of the recommendations of the Legislative Council, the Money Bill shall be deemed to have been passed by both Houses with the amendments recommended by the Legislative Council and accepted by the Legislative Assembly, and if the Legislative Assembly does not accept any of the recommendations of the Legislative Council, it shall be deemed to have been passed by both Houses in the form in which it was passed by the Legislative Assembly without any of the Amendments recommended by the Legislative Council.

(4) If a Money Bill passed by the Legislative Assembly and transmitted to the Legislative Council for its recommendations is not returned to the Legislative Assembly within the said period of thirty days, it shall be deemed to have been passed by both Houses at the expiration of the said period of thirty days in the form in which it was passed by the Legislative Assembly.

146-B. Definition of "Money Bill".—(1) For the purposes of this Chapter, a Bill shall be deemed to be a money Bill if it makes provision—

(a) for imposing or increasing any tax; or

(b) for regulating the borrowing of money or the giving of any guarantee by the province or for amending the law with respect to any financial obligations undertaken or to be undertaken by the province; or

(c) for declaring any expenditure to be expenditure charged on the revenues of the Province, or for increasing the amount of any such expenditure.

(2) A Bill shall not be deemed to be a Money by reason only that it provides for the imposition of fines or other pecuniary penalties or for the demand or payment of fees for licences or fees for services rendered or by reason that it provides for the imposition or increase of any tax by any local authority of body for local purposes.

(3) If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the Legislative Assembly thereon shall be final.

(4) There shall be endorsed on every Money Bill when it is transmitted to the Legislative Council under section 146-A after it has been passed by the Legislative Assembly, and when it is presented to the Governor for as sent under section 147, the certificate of the Speaker of the Legislative Assembly signed by him that it is a Money Bill."

Clause 148.—In the proviso to clause 148, after the words "Provided that" *insert* the words "if the Bill is not a Money Bill".

Clause 151.—In the sub-clause (3) of clause 151, for the words "succeeding section" *substitute* the words "two succeeding sections."

New Clause 152-A.—After clause 152, *insert* the following clause namely:—

"152-A. Excess grants.—If in any financial year expenditure from the revenues of the Province has been incurred on any service for which the vote of the legislative Assembly is necessary in excess of the amount granted for that service and for that year, a demand for the excess shall be presented to the Assembly and the provisions of sections 150 and 151 shall have effect in relation to such demand as they have effect in relation to a demand for a grant."

Clause 153.—For clause 153, *substitute* the following clause, namely:—

"153. Special provisions as to financial Bills.—(1) A Money Bill or an amendment thereto shall not be introduced or moved except on the recommendation of the Governor.

(2) A Bill which, if enacted and brought into operation, would involve expenditure from the revenues of a Province shall not be passed by a House of the Provincial Legislature unless the Governor has recommended to that house the consideration of the Bill."

Provisions relating to the Auditor-General of the Province

Clause 174.—For sub-clause (3) of clause 174 substitute the following namely:—

"(3) The Auditor-General of a Province shall be eligible for appointment as Auditor-General of the federation or as Auditor-General of any other Province but not for any other appointment either under the Federation or under the Government of a unit after he has ceased to hold his office."

Provisions relating to distribution of revenues between the Federation and units and miscellaneous Financial provisions

Clause 194-A.—For, clause 194-A *substitute* the following, namely:—

"194-A. Interpretation.—In this Part—

(a) 'Finance Commission' means the Finance Commission constituted under Section 202-A of this Constitution;

(b) 'unit' does not include a Chief Commissioner's Province."

Clauses 196 to 199.—For clause 196 to 199, *substitute* the following, namely:—

"196. Certain succession duties.—(1) Duties in respect of succession to property other than agricultural land and estate duty in respect of property other than agricultural land shall be levied and collected by the Federation, but sixty per cent or such higher percentage as may be prescribed of the net proceeds in any financial year of any such duty, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that duty is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

(2) If any dispute arises as to the distribution of the net proceeds of any such duty among the units, it shall be referred for decision to such authority as may be appointed in this behalf by the President and the decision of such authority shall be final.

196-A. Certain terminal taxes.—Terminal taxes on goods or passenger carried by railway or air shall be levied and collected by the Federation, but the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

196-B. Certain stamp duties.—Such stamp duties as are mentioned in the Federal Legislative List shall be levied by the Federation and collected, in the case where such duties are leviable within any Chief Commissioner's Province, by the Federation and in other cases, by the units within which such duties are respectively leviable, but the proceeds in any financial year of any such duty leviable in that year within any unit shall not form part of the revenues of the federation, but shall be assigned to that unit.

197. Taxes on Income.—(1) Taxes on income other than agricultural income shall be levied and collected by the Federation, but sixty per cent or such higher percentage as may be prescribed, of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces shall not form part of the revenues of the federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in such manner as may be prescribed:

Provided that the Federal Parliament may, at any time, increase the said taxes by a surcharge for Federal purposes and the whole proceeds of any such surcharge shall form part of the revenues of the Federation.

(2) In this section, "taxes on income" includes any sum levied by the Federation in lieu of any tax on income but does not include any contributions levied by the Federation in respect of its own undertakings.

198. Salt duties and excise duties.—(1) No duties on salt shall be levied by the Federation.

(2) Federal duties of excise shall be levied and collected by the Federation, but, if an Act of the Federal Parliament so provides, there shall be paid out of the revenues of the Federation to the units to which the Act imposing the duty extends, sums equivalent to the whole or any part of the net proceeds of that duty, and those sums shall be distributed among the units in accordance with such principles of distribution as may be prescribed:

Provided that fifty per cent or such higher percentage as may be prescribed, of the net proceeds in any financial year of the excise duty on tobacco, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation but shall be assigned to the units within which that duty is leviable in that year, and shall be distributed among the units in such manner as may be prescribed.

198-A. Taxes not enumerated in any of the lists in the Ninth Schedule.—If any tax not mentioned in any of the lists in the Ninth Schedule to this Constitution is imposed by Act of the Federal Parliament by virtue of entry 90 of the Federal Legislative List, such tax shall be levied and collected by the Federation but a prescribed percentage of the net proceeds in any financial year of any such tax, except in so far as those proceeds represent proceeds attributable to Chief Commissioners' Provinces, shall not form part of the revenues of the Federation, but shall be assigned to the units within which that tax is leviable in that year, and shall be distributed among the units in accordance with such principles of distribution as may be prescribed.

198-B. Grants in lieu of jute export duty.—Until the abolition of the export duty levied by the Federation on jute or jute products or the expiration of ten years from the commencement of this Constitution, whichever is earlier, there shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of the Provinces mentioned below the sums respectively specified against those Provinces:

Province		*Sum*
West Bengal	.....	100 lakhs of rupees.
Bihar	.....	17 lakhs of rupees.
Assam	.....	15 lakhs of rupees.
Orissa	.....	3 lakhs of rupees.

199. Grants from Federation to certain units.—Such sums as the President may, on the recommendation of the Finance Commission, by order fix shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of such units as the President may on such recommendation determine to be in need of assistance, and different sums may be fixed for different units:

Provided that there shall be charged on the revenues of the Federation in each year as grants-in-aid of the revenues of the provinces of Assam and Orissa the sums of thirty and forty lakhs of rupees respectively or such higher sums as the President may on the recommendation of the Finance Commission fix in respect of either of these Provinces:

Provided further that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of a Province such capital and recurring sums as may be necessary to enable that Province to meet the costs of such schemes of development as may be undertaken by the Province with the approval of the Federal Government for the purpose of promoting the welfare of the scheduled tribes in the Province or raising the level of administration of the scheduled areas in the Province to that of the administration of the rest of the Province:

Provided also that there shall be paid out of the revenues of the Federation as grants-in-aid of the revenues of the Province of Assam sums, capital and recurring, equivalent to—

(a) the average excess of expenditure over the revenues during the three years immediately preceding the date of commencement of this Constitution in respect of the administration of the areas specified in Part I of the table appended to paragraph 19 of the Eighth Schedule to this Constitution; and

(b) the costs of such schemes of development as may be undertaken by that Province with the approval of the Federal Government for the purpose of raising the level of administration of the said areas to that of the administration of the rest of the Province.

Clause 200. —In sub-clause (2) of clause 200, for the word "fifty", wherever it occurs, substitute the words "two hundred and fifty".

New Clause 201-A.—After clause 201, insert the following clause, namely:—

"201-A. Application of the provisions relating to distribution of revenues during the period a Proclamation of Emergency is in operation.—Where a proclamation of Emergency is in operation whereby the President has declared that the security of India is threatened, then, notwithstanding anything contained in the foregoing provisions of this Chapter, the President may, by order,

direct that all or any of those provisions shall, until the expiration of the financial year in which such proclamation ceases to operate, have effect subject to such exceptions or modifications as may be specified in such order."

Clause 202.—For Clause 202, substitute the following, namely:—

"202. Definition of 'prescribed' and calculation of 'net proceeds' etc.—(1) In the foregoing provisions of this Chapter—

(a) 'prescribed' means—

(i) until the Finance Commission has been constituted, prescribed by order of the President; and

(ii) after the Finance Commission has been constituted, prescribed by order of the President on the recommendation of the Finance Commission;

(b) 'net proceeds' means in relation to any tax or duty the proceeds thereof reduced by the cost of collection, and for the purposes of those provisions the net proceeds of any tax or duty, or of any part of any tax or duty, in or attributable to any area shall be ascertained and certified by the Auditor-General of the Federation, whose certificate shall be final.

(2) Subject as aforesaid, and to any other express provision in this Chapter, an order of the President may, in any case where under this Part of this Constitution the proceeds of any duty or tax are, or may be, assigned to any unit, provide for the manner in which the proceeds are to be calculated, for the time from or at which and the manner in which any payments are to be made, for the making of adjustments between one financial year and another, and for any other incidental or ancillary matters."

New Clauses 202-A and 202-B.—After clause 202, insert the following clauses, namely:—

"202-A. Finance Commission.—(1) There shall be a Finance Commission which shall consist of a Chairman and four other members to be appointed by the President in his discretion.

(2) The Chairman shall be a person who holds or has held judicial office not inferior in rank to that of a Judge of a High Court.

(3) The members of the Commission shall receive such remuneration as the President may by order determine and shall hold office for a term of five years and may on the expiry of such term be re-appointed for another term of five years.

(4) It shall be the duty of the Commission to perform the functions conferred on the Commission by this Chapter or by any other law for the time being in force and to give advice to the Federal Government upon such financial matters or to perform such other duties of a financial character as may from time to time be referred or assigned to it by the President.

(5) The Commission shall determine its procedure and shall have such powers in the performance of its function as the President may by order confer on it.

202-B. Recommendations of the Finance Commission.—The President shall cause every recommendation made by the Finance Commission under the foregoing provisions of this Chapter together with an explanatory memorandum, as to the action taken thereon by the President to be laid before the Federal Parliament."

Clause 207.—To clause 207, add the following Explanation, namely:—

"Explanation.—For the purposes of this section, any undertaking by the Government of any unit, such as the sale of the forest produce of any forest under the control of such unit or of any article produced in any jail within such

unit, shall not be deemed to be a trade or business, carried on by or on behalf of such Government."

Provisions relating to borrowing

Clause 210.—In sub-clause (3) of clause 210, for the word "Province", in the two places where it occurs, substitute the word "unit".

Ninth Schedule

Provincial Legislative Lists

In the Provincial Legislative List in the Ninth Schedule—

(1) in entry 43, omit the words "hearths and windows";

(2) for entry 50, substitute the following, namely:—

"50. Taxes on the sale, turnover or purchase of goods including taxes in lieu thereof on the use or consumption within the Province of goods liable to taxes within the Province on sale, turnover or purchase taxes on advertisement;"

(3) in entry 53, for the word "Cesses" substitute the word "Taxes"; and

(4) in entry 56, for the word "Does" substitute the word "Taxes".

[Annexure I]

APPENDIX C

No. CA/24/Cons/47

CONSTITUENT ASSEMBLY OF INDIA

Council House,
New Delhi, the 4th March 1948.

FROM

THE HONOURABLE SARDAR VALLABHBHAI J. 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 I have the honour to forward herewith the reports of the North East Frontier (Assam) Tribal and Excluded Areas and Excluded and Partially Excluded Areas (Other than Assam) Sub-Committees, adopted by the Committee at the meeting held on the 24th February 1948. The two sub-Committees had been setup by the Advisory Committee in their meeting held on the 27th February 1947 in pursuance of paragraphs 19(iv) and 20 of the Cabinet Mission's Statement dated the 16th May 1946 and the two reports had been drawn up after they had undertaken extensive tours of the provinces, examined witnesses and representatives of the people and the provincial governments and taken the views of the different political organizations.

2. Acting on an earlier suggestion of the Advisory Committee made on the 7th December 1947, the Drafting Committee had already incorporated in the Draft Constitution provisions on the basis of the recommendations contained in the reports of the two sub-Committees. This coupled with the fact that the recommendations were practically unanimous made our task easy, and except for the two amendments mentioned in the Appendix to this report, the Advisory Committee have accepted all the recommendations of the two sub-Committees. In regard to these amendments, it was agreed that these should be noted for the present and necessary amendments made later.

3. Summaries of the recommendations of the two sub-Committees are given on pages 208 to 218 of the report (Volume I) of Excluded and Partially Excluded Areas (Other than Assam) Sub-Committee. Provisions embodying these recommendations are contained in the Fifth, Sixth and Eighth Schedules attached to the Draft Constitution.

Yours truly,
V. J. PATEL, CHAIRMAN

[Annexure II]

APPENDIX C

North East Frontier (Assam) Tribal and Excluded Areas

1. The following proviso is to be added to paragraph D(1) of Appendix 'A' to Part I on page 20 of the report:—

"Provided that the Assam High Court shall have power of revision in cases where there is failure of justice or where the authority exercised by the District Court is without jurisdiction."

2. In Schedule 'B' on page 23 of the report the words "excluding the plains portion" be added after each of the items in the schedule so as to read as follows:—

The Sadiya and Balipara Frontier Tracts (excluding the plains portion).

The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract and the plains portion).

The Naga Tribal Area (excluding the plains portion).

[Annexure III]

APPENDIX C

The 28*th July* 1947.

FROM

THE CHAIRMAN,

NORTH-EAST FRONTIER (ASSAM) TRIBAL & EXCLUDED AREAS SUB-COMMITTEE.

To

THE CHAIRMAN,

ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS, MINORITIES, TRIBAL AREAS, ETC.

CONSTITUENT ASSEMBLY OF INDIA,
COUNCIL HOUSE, NEW DELHI

SIR,

I have the honour to forward herewith my Sub-Committee's report on the Tribal and Excluded Areas of Assam. The report has been drawn up by us after a tour of the Province which included visits to the Lushai Hills District, the North Cachar Hills Sub-Division, the Mikir Hills and the Naga Hills District. The Committee could not visit the Garo Hills District on account of bad weather and difficult communications and the Jowai Sub-division of the Khasi Hills District could not also be visited for the same reason. We however examined witnesses and representatives of the Garo Hills District at Gauhati and paid a visit also to certain Garo villages on and near the Goalpara road. At most of the places we visited, we had to be satisfied with a visit to the headquarters of the district or tract and with a visit to one or two villages in the neighbourhood. To visit places in the interior would have taken us a great deal more of time and delayed our report considerably. Representatives of the tribes however visited the headquarters, even from long distances, and on the whole we feel that we have been able to get into contact with all the important representatives of the hill people and to take their views on the future administration of the areas. We have also taken the views of the different political organisations in the province and recorded the evidence of officials.

2. Except for the Frontier Tracts and Tribal Areas, we co-opted two members from the tribes of each of the districts visited. The co-opted members, with the exception of Mr. Kezehol (representative of the Kohima section of the Naga National Council and himself an Angami) who submitted his resignation during the final meeting at Shillong, discussed the proposals and signed (subject to dissent in the case of Mr. Kheloushe & Mr. Aliba Imti) the minutes of the meeting.

3. In connection with the co-option of members we would like to mention the "District Conference" convened by the Superintendent of the Lushai Hills as an elected body purporting to be representative of the whole of the Lushai Hills. The election to this body which consisted of twenty chiefs and twenty commoners with the Superintendent himself as President was boycotted by the Mizo Union which was the only representative body of the Lusha is at that time and clearly could not be regarded by us as representing more than a

section of opinion, largely that of certain officials and chiefs controlled by them. Consequently the criticism that we co-opted members without consulting the Superintendent or his conference carriers, in our opinion, no weight.

4. In the Naga Hills, the Committee had to face a similar situation in the sense that certain officials were influencing the extreme elements of the Naga National Council. Discussion of a number of points could not be carried on to the full extent on account of lack of agreement within the Naga National Council but we understand that on the occasion of the Governor's visit to Kohima, the more reasonable elements put forward their views. We find that our proposals not only contain the substance of these but go further in some respects. The resignation of Mr. Kezehol was due to the fact that his section of the Naga National Council was dissident. Our proposals correspond fully to the spirit of the resolution of the Naga National Council passed at Wokha in June 1946, and we feel confident that the majority of people in the Naga Hills District will find that our proposals go a long way towards meeting even their present point of view.

5. Our report (Volume I) is divided into two parts and the evidence forms a separate volume (Volume II). In the first part of our report we have given a bird's eye view of the areas as a whole, noting in particular their common features and giving the frame work of the scheme of administration recommended by us. In Part II a largely descriptive account of the different areas is given separately and we have mentioned their special features or needs.

6. We regret that our colleague Mr. Aliba Imti has not been able to attend the meeting to sign the report and hope that he will be able to attend the meeting of the Advisory Committee.

I have the honour to be,
SIR,
Your most obedient servant,
G. N. BARDOLOI,
Chairman,
North-East Frontier (Assam) Tribal & Excluded Areas Sub-Committee

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[Annexure IV]

APPENDIX C

REPORT OF THE SUB-COMMITTEE ON NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS

Part I

1. INTRODUCTORY—

The Excluded and Partially Excluded Areas of Assam as scheduled by the Order-in-Council under the Government of India Act, 1935, are as follows:

Excluded Areas

The North-East Frontier (Sadiya, Balipara and Lakhimpur).

Tracts

The Naga Hills Districts.
The Lushai Hills District.
The North Cachar Hills Sub-Division of the Cachar District.

Partially Excluded Areas

The Garo Hills District.
The Mikir Hills (in the Nowgong and Sibsagar Districts).
The British portion of the Khasi and Jaintia Hills District, other than Shillong Municipality and Cantt.

There is also an area to the east of the Naga Hills District known as the Naga Tribal Area the position of which is covered by the provisions of Section 311 (1) of the Government of India Act: The Tirap Frontier Tract which adjoins the Lakhimpur Frontier Tract has no defined boundary with Burma.

The Assam Tribal and Excluded Areas Sub-Committee is required to report on a scheme of administration for all these areas.

2. GENERAL DESCRIPTION—

(a) **The Frontier Tracts.**—The Schedule quoted above shows the North-East Frontier Tracts as excluded areas. In considering the list of areas to be excluded or partially excluded and making recommendations to H. M. G. in 1935 the Government of India wrote as follows:—

"Balipara, Sadiya and Lakhimpur are essentially frontier areas inhabited by tribes in an early stage of development. Balipara has no defined outer boundaries and extends to the confines of Bhutan and Tibet." It will be seen that it was mentioned that Balipara has no definite outer boundaries but the position of Sadiya and Lakhimpur or the Tirap Frontier Tract was apparently the same. On the Tirap Frontier Tract in fact, the boundary with Burma has yet to be settled and all three regions include considerable areas of as yet virtually unadministered and only partially explored territory. The position of Balipara and Sadiya however differs from that of the Tirap Frontier in that there exists a boundary between Tibet and India. The facts are that in 1914 there was a tripartite convention with Tibet and China regarding the relations of the three Governments and in particular regarding the frontier between India and Tibet. The convention which contained an agreement about the frontier line between India and Tibet was ratified by the Tibetan authorities at Lhasa, and the line known as the MacMahon Line was indicated on a map of which a copy was given to the Lhasa Government which acknowledged it. The existence of this line was for a long time not known to the Assam Government, and on the other hand it was found that there was no notification under Section 60 of the Government of India Act, 1919, specifying the northern frontier of Assam, with the result that the McMahon Line which is the frontier between Tibet and India is the legal boundary of Assam as well. In practice the position is peculiar. Though the Governor of Assam is vested with authority over the Frontier Tracts, it is taken to be exercised, not by virtue of the provisions applicable to Excluded Areas of the Government of India Act, 1935, but as the Agent of the Governor-General under Section 123 of the Act, *vide* Notification No. I-X, dated the 1st April 1937 of the Government of India in the External Affairs Department (Appendix B, page 130). All the costs of administration of the tracts are also borne by the Central Government and the Central Government are inclined to treat them as tribal areas within the meaning of Section 311 of the Government of India Act. On the other hand, the local officials treat the area as consisting of two parts. One which they call the Excluded Area and stretches up to the "Inner Line" boundary, and the Tribal Area, which by them is understood to mean the area beyond the "Inner Line" boundary. The "Inner Line" boundary is roughly along the foot of the hills and the area bounded by its occupied by a somewhat mixed population, while the hill portions beyond it are purely inhabited by the tribes. This treatment again does not appear to be strictly justifiable in law though it may be convenient to think of the administered plains portion of the area separately from the not fully administered hills. Since the frontier tracts are administered in practice by the Central Government as tribal areas, the absence of a notification under Section 60 of the Government of India Act, 1919, was regarded as an oversight. The position of these areas will be discussed further at a later stage, but it is clear from the foregoing that the Naga Tribal Area on the Eastern Frontier and the Balipara, Sadiya and Lakhimpur or Tirap Frontier Tracts on the North-Eastern Frontier fall under one category. The Balipara Frontier Tract which includes the

Subansiri area is the tract over which there is as yet the smallest measure of control and administration. This tract and the Sadiya Frontier Tract are inhabited by tribes such as the Senjithonji, Dafla, Apa Tani, Momba (Balipara) the Abor, Mishmi, Hkampti (Sadiya). The Tirap Frontier contains Singphaws (who were originally Kachins) and a number of tribes classed as Naga, while the Naga Tribal Area is largely inhabited by Nagas of the Konyak group. The policy on these Frontiers is to establish administration and control over the whole area right up to the frontier, and a five-year plan has been sanctioned by the Government of India. This plan mostly covers the Sadiya and Balipara Tracts but a few schemes of the Naga Tribal Area are also included in it. A separate plan for the development of the latter is under consideration.

(b) **The Excluded Areas.**—The Excluded Areas of the Naga Hills District, the Lushai Hills District and the North Cachar Hills Sub-division fall within the second category of areas over which the Provincial Ministry has no jurisdiction whatever and the revenues expended in this area are not subject to the vote of the provincial legislature. The Naga Hills District is the home of a good number of tribes classed as Naga, such as Angami, Ao, Sema, Lhota. Adjoining it is the Naga Tribal Area in the eastern portion of which a good deal of head hunting still goes on. Though the tribes are all called Naga, they speak different languages and have differing customs and practices also. The Lushai on the other hand, though consisting of a number of clans, are practically one people and speak a common language. The Kuki in the North Cachar Hills and else where are people of the same stock as Lushai or Mizo and speak the same language or a dialect. The Lushai Hills District except for an inappreciable number of Lakhers in the extreme south contains a uniform population. The North Cachar Hills, on the other hand, provide sanctuary for the Kachari, Naga, Kuki, Mikir and Khasi. The largest of the tribes here are the Kachari and the villages of the different tribes, are more or less interspersed.

(c) **Partially Excluded Areas.**—The third category is the Partially Excluded Areas consisting of the Khasi Hills District (British portion), the Garo Hills District and the Mikir Hills which fall in two districts, *viz.* Nowgong and Sibsagar, are administered by the Provincial Government subject to the powers of the Governor to withhold or apply the laws of the Provincial Legislature with or without modifications, or to make special rules. The Khasia, incidentally, are the only line of the tribes in this area who speak a Monkhmer language; all the other tribes speak Tibeto-Burmese languages. Generally speaking, they inhabit the areas which bear their names but there are villages outside these districts which also contain some of the tribes. Thus, the Garo inhabit a number of villages in the Mymensingh district of Bengal in addition to many villages in the districts of Kamrup and Goalpara in Assam. The Khasi population is not only to be found in the British portion of the Khasi and Jaintia Hills, but the States (which comprise a fairly large area) round about Shillong are inhabited by the Khasis. These States, twenty five in number, have the special feature that their chiefs are actually elected in a few cases by free election, though in the majority of cases the election is confined to a particular clan, the electorate consisting of Myntries of the clan only in some states, by a joint electorate of Myntries and electors elected by the people in general in others. The States have comparatively little revenue or authority and seem to depend for a good deal of support on the Political Officer in their relations with their peoples. There is a strong desire among the people of the States to "federate" with their brothers in the British portion, a feeling which the people on the British side reciprocate. Some of the Siems also appear to favour amalgamation but their idea of the Federation differs from that of the people in that the Chiefs seek a greater power for themselves, than the people are prepared to concede to them.

Of the people in the Partially Excluded Areas, the Khasi are the most advanced and the Mikir the least. Unlike the Naga and the Lushai Hills these areas have had much more contact with people in the plains, situated as they are between the valleys of the Brahmaputra and the Surma. They have representatives in the provincial legislature who, in the case of the Garo and the Mikir Hills, are elected by franchise of the Nokmas and the village headmen respectively.

3. DEVELOPMENT—

As regards the degree of development and education in the excluded and Partially Excluded Areas, the most backward areas, comparatively appear to be the Mikir and the Garo Hills, both of which are Partially Excluded Areas. The Frontier Tracts, parts of which must be inhabited by people with no contact with civilisation or education, are of course on a different footing. The Khasi Hills have probably benefited by the fact that the capital of the province is situated in them. In the Garo Hills, Christian Missions have spread some education along with Christianity but the Mikir Hills have suffered from the fact that they are divided between two districts, Nowgong and Sibsagar, and thus nobody's child. Partial exclusion has in a way been responsible for their backwardness also, since both the Governor of the province and the Ministry can disclaim the sole responsibility for the area. The Sub-divisional Officers and Deputy Commissioners of these Hills moreover seem to have taken little interest in them and hardly any touring has been performed by officers in the Mikir areas. On the whole, however, the Hill Districts show considerable progress. The Khasi Hills have provided Ministers in the Provincial Government. The people of the Lushai Hills who have benefited by the activities of the Missionaries among them cannot be said to be behind the people of the plains in culture, education and literacy. In literacy particularly they are in a better position than a good number of the plains areas and the general percentage of literacy among them is about 13 per cent, while the literacy among men only is about 30 per cent. Among the Naga also may be found a number of persons of college education, though the district as a whole appears to be less advanced than the Lushai Hills. In the Naga Hills, the demand for education is keener in the Mokokchung Sub-division than in the Kohima Sub-division. In the North Cachar Hills, the development of the people has not been impressive and the Sub-division as a whole should be classed as more backward than other areas and comparable with the Mikir rather than the Lushai Hills. While education has made some progress in all these areas, the conditions of life and pursuit of non-agricultural occupations cannot be said to have reached the level attained in the plains, although the degree of intelligence necessary is undoubtedly available in most of these areas, even in the tribal areas. We were in fact impressed by the intelligence of the Abor and Mishmi, the Sherdukpen, the Hkampti and even the Konyak of the tribal area. The skill of many of the tribes in weaving and tapestry contains the elements of a very attractive cottage industry—at present articles are made largely for personal use—but agriculture is practically the only occupation, and with the exception of considerable areas occupied by the Angami in the Naga Hill under terraced and irrigated cultivation and the advanced cultivation in the Khasi Hills, the mode of agriculture is still the primitive one of *jhuming*. Portions of the forest are burnt down and in the ashes of the burnt patch the seeds are sown: the following year a new patch of forest is felled and cultivated and so on, the first patch perhaps being ready again for cultivation after three or four years. The jhuming patches develop a thick growth of bamboo or weeds and trees do not grow on them. Thus the method is destructive of good jungle. In certain parts, of course, conditions may be said to be unfavourable to the terracing of the hillsides and there is no source of water supply other than rainfall. In the Lushai Hills for instance

comparatively few areas have the gradual slope which renders terracing easy; in the North Cachar Hills Sub-division, irrigation is difficult to arrange and the small hamlets occupied by the tribes cannot provide enough labour for terracing work. Attempts have however been made to introduce terracing and improved methods of cultivation as well as the growing of fruits, and there is little doubt that good progress will soon be feasible in these directions. A certain amount of political consciousness has also developed among the tribes, and we were much impressed by the demand of the Abor in the Sadiya Frontier Tract for representation in the provincial legislature. The idea of Government by the people through their chosen representatives is not a totally new conception to most of the hill people whose ways of life centre around the tribal and village councils, and what is required now is really an understanding of the mechanism and implications as well as the responsibilities of the higher stages of administration and the impracticability as well as the undesirable results of small groups of rural population being entrusted with too much responsibility. Generally speaking, it can be stated that all the excluded areas of the province, not taking into account at this stage the frontier and tribal areas, have reached the stage of development when they can exercise their votes as intelligently as the people of the plains. On the ground of inability to understand or exercise the franchise therefore, there is absolutely no justification for keeping the excluded areas in that condition any longer.

As regards the Frontier Tracts, not only has there been little education except in the fringes or plains portions, but administration has yet to be fully established over large tracts and the tribes freed from feuds or raids among themselves and from the encroachment and oppression of Tibetan tax collectors. The removal of the trade blocks set up by these Tibetans on the Indian side of the MacMahon Line sometimes creates delicate situations. Thus the country is in many ways unripe for regular administration. Only when the new five year programme has made good headway will there be an adequate improvement in the position. Even the village councils in these tracts appear to be ill-organised and there seems to be little material as yet for local self-governing institutions though it may be possible to find a few people who can speak for their tribe. The plains portions are however on a different footing and the question of including them in the provincial administration needs careful examination. For example, we are of the view that *prima facie* there is little justification to keep the Saikhoaghat, the Sadiya plains portion and possibly portions of the Balipara Frontier Tract under special administration.

4. THE HILL PEOPLE'S VIEWS—

Though the Constituent Assembly Secretariat and we ourselves, issued a leaflet to provide information and create interest in the political future of India, the Constituent Assembly's functions and the objects of our tour, the Hill people, even of the Excluded Areas, were not found lacking in political consciousness. Perhaps not without instigation by certain elements, this consciousness has even instilled ideas of an independent status the external relations under which would be governed by treaty or agreement only. In the Lushai Hills District the idea of the Superintendent who constituted himself the President of the "District Conference" which he himself had convened (see para. 5 Part II) was that the District should manage all affairs with the exception of defence in regard to which it should enter into an agreement with the Government of India. A "Constitution" based on this principle was later drafted by the Conference. (The great majority of the Lushai however cannot be regarded as holding these views and it is doubtful if the District Conference represents the views of anybody other than certain officials and chiefs). In the Naga Hills, although the original resolution as passed by the Naga National Council at Wokha contemplated the administration of the area more or less like other parts of Assam, a demand was subsequently put forward for "an interim Government of the Naga people" under

the protection of a benevolent "guardian power" who would provide funds for development and defence for a period of ten years after which the Naga people would decide what they would do with themselves. Here again it seems to us clear that the views of a small group of people, following the vogue in the Naga Hills of decisions being taken by general agreement and not by majority—gained the acceptance of the National Council, for little more purpose than that of presenting a common front. In other areas more moderate views prevail. In the Garo Hills the draft constitution asked for all powers of government including taxation, administration of justice etc. to be vested in the legal council and the only link proposed with the Provincial Government was in respect of a few subjects like higher education, medical aid etc., other than the subjects of defence, external affairs and communications which were not provincial subjects. In the Mikir Hills and in the North Cachar Hills, which are the least vocal and advanced of the areas under consideration, there would probably be satisfaction if control over land and local customs and administration of justice are left to the local people. The Khasi Hills proposals were for a federation of the States and British portions; otherwise the proposals were similar to those made for the Garo Hills. A feeling common to all of the Hill Districts is that people of the same tribe should be brought together under a common administration. This has led to a demand for rectification of boundaries. The Lushai want the Kuki of Manipur and other areas in their boundaries, the Naga want the Zemi areas of the North Cachar Hills included in their district and so on.

5. POLITICAL EXPERIENCE—

Except for the Municipality of Shillong, there are no statutory local self-governing bodies in any of the Hill Districts. The partially excluded areas have elected representatives in the provincial legislature but in the Garo Hills the franchise is limited to the Nokmas and in the Mikir Hills to the headmen. Generally, however, the tribes are all highly democratic in the sense that their village councils are created by general assent or election. Chiefship among certain tribes like the Lushai is hereditary (although certain chiefs have been appointed by the Superintendent) but among other tribes appointment of headmen is by common consent or by election or, in some cases, selection from particular families. Disputes are usually settled by the Chief or headman or council of elders. In the Naga Hills what is aimed at is general agreement in settling disputes. Allotment of land for jhum is generally the function of the Chiefs or headmen (except in the Khasi & Jaintia Hills) and there are doubtless many other matters pertaining to the life of the village which are dealt with by the chiefs or elders, but while this may form a suitable background for local self-government the tribes altogether lack experience of modern self-governing institutions. The "District Conference" of the Lushai Hills, the tribal council of the North Cachar Hills and the Naga National Council are very recent essays in organising representative bodies for the district as a whole and have no statutory sanction. While there is no doubt that the Naga, Lushai, Khasi and Garo will be able to manage a large measure of local autonomy, the North Cachar tribes and the Mikir may yet want a period of supervision and guidance.

6. THE SPECIAL FEATURES—

Whatever the capacity of the different councils or conferences to manage the affairs of the areas may be, the general proposals for the administration of these areas must be based upon the following considerations:—

(a) The distinct social customs and tribal organisations of the different peoples as well as their religious beliefs. For instance, the Khasi and the Garo have a matriarchal system, the Lushai have hereditary chiefs, the Ao Naga have got the council of elders called *'tatar'* which his periodically renewed

by election. The laws of succession of the Lushai permit the youngest son of the family to succeed to the property of his father. Similarly, in the case of the Garo, the youngest daughter gets her mother's property and so on. Christianity has made considerable headway among the Lushai, Khasi and the Garo, but large numbers of the hill people still continue their own tribal forms of worship which some people describe as 'animism'.

(b) The fear of exploitation by the people of the plains on account of their superior organisation and experience of business, the hill people fear that if suitable provisions are not made to prevent the people of the plains from acquiring land in the hill areas, large numbers of them will settle down and not only occupy land belonging to the hill people but will also exploit them in the non-agricultural professions. Thus, the hill people seem to attach special value to the present system of an 'Inner Line' to cross which non-tribals entering the area require a pass, and the provisions prohibiting non-tribals from settling down or carrying on business without the approval of the district-officer. It is felt that even industries should not be started in the hill areas by non-tribals because that might mean exploitation of the people and the land by the non-tribals. In addition to these main points there is the question of preserving their ways of life and language, and method of cultivation etc. Opinions are expressed that there could be adequate protection in these matters only by transferring the government of the area entirely into the hands of the hill people themselves.

(c) In the making suitable financial provisions it is feared that unless suitable provisions are made or powers are conferred upon the local councils themselves, the provincial government may not, due to the pressure of the plains people, set apart adequate funds for the development of the tribal areas. In this connection we invite a reference to the views expressed in the Assam Government's Factual Memorandum on p. 67 of Constituent Assembly Pamphlet Excluded and Partially Excluded Areas—I.

7. PROVISIONS OF 1935 ACT—

The provisions of the Government of India Act are based on the principle that legislation which is passed by the Provincial Legislature is often likely to be unsuitable for application to the Hill Districts. The mechanism provided for "filtering" the legislation is therefore to empower the Governor of the Province to apply or not to apply such legislation. The full implications of the provisions of the Government of India Act are discussed in the Constituent Assembly pamphlets on "Excluded and Partially Excluded Areas" Parts I and II, and it is perhaps not necessary to discuss them exhaustively here. The main features of the provisions are that certain areas have been scheduled as excluded or partially excluded; it is possible for areas to be transferred from the category of excluded to the category of partially excluded by an Order-in-Council and, similarly, from the category of partially excluded to the category of non-excluded; legislation will not apply automatically to any such scheduled area even if it is a partially excluded area, but will have to be notified by the Governor who, if he applies them at all, can make alterations. The revenues for excluded areas are charged to the revenues of the Province and special regulations, which do not apply to the rest of the Province, may be made by the Governor in his discretion for excluded and partially excluded areas.

8. FUTURE POLICY—

The continuance or otherwise of exclusion cannot be considered solely from the point of view of the general advancement of an area. If that were so, all that would be necessary in the case of areas like the Lushai Hills which are considered sufficiently advanced would be to remove the feature of exclusion or partial exclusion. Such action may be suitable in the case of certain partially excluded areas in other parts of India. But in the Hills of Assam the fact that the hill people have not yet been assimilated with the

people of the plains of Assam has to be taken into account though a great proportion of hill people now classed as plains tribals have gone a long way towards such assimilation. Assimilation has probably advanced least in the Naga Hills and in the Lushai Hills, and the policy of exclusion has of course tended to create a feeling of separateness.

On the other hand, it is the advice of anthropologists (*see* Dr. Guha's evidence) that assimilation cannot take place by the sudden breaking up of tribal institutions and what is required is evolution or growth on the old foundations. This means that the evolution should come as far as possible from the tribe itself but it is equally clear that contact with outside influences is necessary though not in a compelling way. The distinct features of their way of life have at any rate to be taken into account. Some of the tribal systems such as the system of the tribal council for the decision of disputes afford by far the simplest and the best way of dispensation of justice for the rural areas without the costly system of courts and codified laws. Until there is a change in the way of life brought about by the hill people themselves, it would not be desirable to permit any different system to be imposed from outside. The future of these hills now does not seem to lie in absorption in the hill people will become indistinguishable from non-hill people but in political and social amalgamation.

9. THE HILL PEOPLE'S LAND—

The anxiety of the hill people about their land and their fear of exploitation are undoubtedly matters for making special provisions; it has been the experience in other parts of India and in other countries, that unless protection is given, land is taken up by people from the more advanced and crowded areas. The question has already acquired serious proportions in the plains portions of Assam and the pressure of population from outside has brought it up as a serious problem which in the next few years may be expected to become very much more acute. There seems to be no doubt whatever therefore that the hill people should have the largest possible measure of protection for their land and provisions for the control of immigration into their areas for agricultural or non-agricultural purposes. It seems also clear that the hill people will not have sufficient confidence if the control on such matters is kept in the hands of the provincial Government which may only be too amenable to the pressure of its supporters. Even the Head of the State under the new Constitution will probably be an elected head, and even though he may be elected also by the votes of the hill people, they may still have the fear that he will give way to the pressure of the plains people on whose votes he may be largely dependent. The atmosphere of fear and suspicion which now prevails, even if it is argued that it is unjustified, is nevertheless one which must be recognised and in order to allay these suspicions and fears, it would appear necessary to provide as far as possible such constitutional provisions and safeguards as would give no room for them. Moreover, in the areas where no right of private property or proprietory right of the chief is recognised the land is regarded as the property of the clan, including the forests. Boundaries between the area of one hill or tribe are recognised and violation may result in fighting. Large areas of land are required for *jhum* and this explains in part the fear of the tribesman that its availability will be reduced if incursions by outsiders is permitted. In all the hill areas visited by us, there was an emphatic unanimity of opinion among the hill people that there should be control of immigration and allocation of land to outsiders, and that such controls should be vested in the hands of the hill people themselves. Accepting this then as a fundamental feature of the administration of the hills, we recommend that the Hill Districts should have powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. The only limitation we would place upon this is to provide that the local councils should not require payment for the occupation of vacant land by the Provisional Government for public purposes or

prevent the acquisition of private land, also required for public purposes, on payment of compensation.

10. FOREST—

As part of the question of occupation of land the transfer of the management of land now classed as reserved forest has also been raised. We have recommended that the legislative powers of the Local Councils should not cover reserved forests. While accepting the need for centralised management of the forests, we would strongly emphasise that in questions of actual management, including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the hill people should be taken into account, and were commend that the Provincial Government should accept this principle as a part of its policy.

11. JHUMING—

We recommend further that the tribes should have the right of deciding for themselves whether to permit *jhum* cultivation, or not. We are fully aware of the evils of *jhum* cultivation that it leads to erosion, alteration of the rainfall, floods, change of climate etc. The tribes may not always be aware of these dangers but they have definitely begun to realise that settled or terraced cultivation is the better way. The Angami terrace on a large scale and in most of the hills definite attempts at introducing settled cultivation are being made. The main difficulty however is the fact that all hill areas do not lend themselves to terracing equally well and in some parts, there may be a portion which could be terraced without prohibitive cost, or economically cultivated, by this method. Terracing means labour, a suitable hill side and the possibility of irrigation. When these are not all available it is obvious that the tribes cannot be persuaded to take up terracing and must continue *jhum*. While therefore, we feel strongly that *jhuming* should be discouraged and stopped whenever possible, no general legislative bar can be imposed without taking local circumstances in the account. Besides there is a feeling among the tribes that *jhuming* is part of their way of life, and that interference with it is wanton, and done with ulterior motives. The wearing out of that feeling must come from within rather than as imposition from outside which may cause undue excitement among the tribes. We propose therefore that the control of jhuming should be left to local councils who, we expect, will be guided by expert advice.

12. CIVIL AND CRIMINAL COURTS—

On the principle that the local customary laws should be interfered with as little as possible and that the tribal councils and courts should be maintained we recommended that the hill people should have full powers of administering their own social laws, codifying or modifying them. At present the Code of Criminal Procedure and the Civil Procedure Code are not applicable to the hill districts though officials are expected to be guided by the spirit of these laws. In practice, criminal cases, which are not of a serious nature like murder and offences against the State, are left to the tribal councils or chiefs to be dealt within accordance with custom. Usually offences are treated as matters for the payment of compensation and fines are inflicted. There appears no harm and a good deal of advantage in maintaining current practice in this respect and we recommend accordingly that all criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and that so far as such offences are concerned the Code of Criminal Procedure should not apply. As regards the more serious offences punishable with imprisonment of five years or more we are of the view that they should be tried henceforth regularly under the Criminal Procedure Code. This does not mean that tribal councils or courts set up by the local councils should not try such cases and we contemplate that wherever they are capable of being empowered with powers under the Criminal Procedure Code this should be done.

As regards civil cases (among the tribes there is little distinction between criminal and civil cases) we recommend that except suits arising out of special laws, all ordinary suits should be disposed of by the tribal councils or courts and we see no objection to the local councils being invested with full powers to deal with them, including appeal and revision. In respect of civil and criminal cases where non-tribals are involved, they should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing Circuit Magistrates or Judges.

13. OTHER LOCAL SELF GOVERNMENT—

As regards such matters as primary schools dispensaries and the like which normally come under the scope of local self-governing institutions in the plains it is needless for us to say that the Hill Districts should get all such powers and except in the North Cachar Hills and the Mikir Hills, we are of opinion that the Hills People will be able to takeover control of such matters without much difficulty. With a view to providing some training and thereby smoothening the transition, the Chairman of our Sub-Committee has already taken up the question of establishment of councils with powers of local boards. The difference between the councils we contemplate for the Hill Districts and Local Boards will already have been clear from the foregoing paragraphs. It is proposed to entrust these councils with powers of legislation and administration over land, village forest agriculture and village and town management in general, in addition to the administration of tribal or local law. Over and above these matters the tribes are highly interested in education and feel that they should have full control over primary education at least. We have considered this question in all its aspects and feel that the safe policy to follow in this matter is to leave it to the local councils to come to a decision on the policy to be followed. We recommend that primary education should be administered by the Local Councils without interference by the Government of Assam. The Assam Government will however always be available to provide such advice and assistance as the Local Councils may require through its Education Department particularly with reference to the linking up of primary with secondary education. As regards secondary school education we do not consider that the Hill People in general are able to look after this subject themselves nor do we consider that this stage should be left without some integration at least with the general system of the Province. There is of course no objection to Local Council being made responsible for the management of secondary schools where they are found to have the necessary material. But we consider that no statutory provision for this necessary and that it should be open to the Council and the Government of Assam by executive instructions to make the necessary arrangements. The Local Councils will have powers of management in all other matters usually administered by local boards and we consider that on account of the special circumstances in the hills the councils should have powers to make their own administrative regulations and rules. We expect however that in all matters, particularly those involving technical matters like the management of dispensaries or construction of roads, the Local Councils and their staff will work under the Executive guidance of the corresponding Provincial Department.

For the Mikir and the North Cachar Hills, we recommend that the necessary supervision and guidance should be provided for a period of six years which we expect will be the term of two councils by the appointment of the District or Sub-Divisional officer, the case may be, as *ex-officio* President of the Council with powers, subject to the control of the Government of Assam, to modify on annual resolutions of the Council and to issue instructions as he may find necessary.

14. FINANCE—

(a) **Powers of the Council.**—The next question we propose to consider is finance. A demand common to the Naga Hills, the Khasi and Jaintia

Hills, the Garo Hills and the Lushai Hill is that all powers of taxation should rest in the National Councils. The National Conference of the Garo and of the Khasi and Jaintia Hills suggested a contribution to the provincial revenues or a sharing of certain items. If this were accepted even the Centre would have no powers to levy finances in these areas. Suggestions regarding contribution to provincial revenues are obviously based on the assumption that the district, in addition to what it needs for its own expenditure, will have a surplus to make over to the Provincial Government. In the case of the Garo Hills, it was suggested that the abolition of zamindari rights in that area would result in a considerable augmentation of the revenues of the district which would then be able to spare a certain sum to the Provincial Government, and generally the idea seems to be that given sufficient powers the Districts will be able to increase their revenues by exploitation of forests, mineral and hydro-electrical potentialities. Not only do some of the districts feel that they will have plenty of money in due course but the demand for all powers of taxation is based to a large extent on the fear that if the Provincial Government has those powers they may not get a fair deal and there may be diversion of money to other districts. Districts which, on the other hand feel that they do not command potential sources of revenue or at least realise that the development of the resources will take time during which they remained deficit can only make a vague demand for allocation of funds from a benevolent Province or Centre to supplement local resources.

The question of finance and powers of taxation in an atmosphere of suspicion and fear is not an easy one. Any surplus district is likely to examine the provincial expenditure with a jealous eye to find out whether it gets a good share of expenditure for its own benefit or not. The extreme case is the expectation or demand that all the revenues derived from a particular district must be spent within that district itself. It is obvious however that where different districts are functioning under a common Provincial Government, the revenues of the whole area become diverted to a common pool from which they are distributed to the best possible advantage of the Province as a whole. Should all powers of taxation and appropriation of revenues be placed in the hands of the hills districts, the plains districts will not fail to make a similar demand, and if they do, there would be little justification to refuse it to them. The concession of such a demand to the various districts virtually amounts to breaking up the provincial administration. Besides, giving unregulated powers of taxation in general to small units is undesirable as it would result in different principles, perhaps unsound principles, being adopted indifferent places for purposes of taxation and in the absence of coordination and provincial control, chaos is more likely than sound administration. Further it is obvious that a local council and local executive would be much more susceptible and amenable to local pressure and influence than either the Provincial Government or its executive and will therefore not find it possible to undertake measures of taxation which the Province as a whole can. Even if taxes can be adequately resorted to by the local council, the proposal that an appropriation could be made for the provincial revenues does not sound practicable, for what the quantum of that will be is to be determined only by the National Council and it is quite obvious that the Council will decide the quantum from the point of view of its own need rather than the needs of the Province as a whole. The areas which feel that they have large potential sources of revenue must not forget that their demands for educational and other development are also very large and expanding. Various other factors such as the efficiency of tax collection and the cost of collecting staff have to be taken into consideration and we are of the view that the only practicable way is to allocate certain taxes and financial powers to the Councils and not all powers of taxation. Accepting this conclusion then we can consider what powers they should have. It goes without saying that they should have all the powers which local bodies in a plains district enjoy and we recommend that in respect of taxes like taxes on houses, professions or trades, vehicles,

animals, octroi, market dues, ferry dues and powers to impose cesses for specific purposes within the ambit of the Councils, they should have full powers. We expect that the Councils will seek the advice of the Provincial Government in exercising these powers but in view of the democratic spirit and nature of tribal life, we do not consider that any control by the Provincial Government which is prescribed by statute is necessary. In addition we would recommend powers to impose house tax or poll tax, land revenue (as land administration is made over to the Councils), levies arising out of the powers of management of village forest, such as grazing dues and licences for removal of forest produce.

(b) **Provincial Finance.**—There is no doubt that for some time to come the development of the Hills must depend on the rest of the province and they will be regarded as "deficit areas". As their development must be regarded as a matter of urgency considerable sums of money will be required but it is equally certain that measures of development are needed in other districts also and the claims of the Hills will not find a free field. The expenditure on the excluded areas has so far been a non-voted charge on the provincial revenues but unless it is provided in the Constitution that sums considered necessary by the Governor for the Hills will be outside the vote of the legislature we have to consider how the provision of adequate revenues can be secured. In this connection, we would point out the admission in the Factual Memorandum* received from the Government of Assam that while the Excluded Areas have benefited by the provision in the Government of India Act regarding them, the Partially Excluded Areas in respect of which the funds are subject to the vote of the legislature have suffered greatly. In particular, the position of the Mikir Hills seems to be a bad example. Here, only a small proportion of the revenues derived from the area which contains rich forests is utilised in the district and the position in respect of provision of schools, medical facilities etc. is unsatisfactory. We have noted the views of witnesses from the various political organisations that there is a lot of goodwill among the plains people towards the tribes but we feel that a more concrete provision is necessary as practical administration must be taken into account. It is admitted all round that the development of the hills is a matter of urgency for the province as a whole and there should therefore be a good measure of support for a specific provision.

Coming to the actual provision to be made, it has been suggested in some quarters that the revenue to be spent within a Hill District should be earmarked by provision in the Constitution and should form a definite proportion of the revenue of the Province. This, in our opinion, is an impracticable proposition since any statutory ratio is invariable for a number of years and there are no simple considerations on which it can be based. If it is based on the population, it is obvious that the expenditure would be totally inadequate, for the hill areas are generally sparsely populated. On the other hand, if a certain stage of development has been reached, the provision of funds on the basis of area may amount pampering the tracts, while revenue is needed elsewhere. We have no doubt that the fixation of a rigid ratio by statute would not be suitable for the Provincial Government to work on and may not be in the interests of the Hills themselves. We feel that placing the sums outside the vote of the legislature is likely to be distasteful to the Legislature and contrary to the democratic spirit and proceed therefore to consider an alternative.

It appears to us that the main reason why the needs of the Hills are apt to be overlooked is due to the clamour of more vocal districts and the facts that there is little attention to or criticism of, the provisions made for the Hills, which in the case of voted items are merged in general figures. If therefore a separate financial statement for each such area showing the revenue from it and the expenditure proposed is placed before the legislature, it would have, apart from the psychological effect, the advantage that it would draw attention specifically to any inadequacy and make scrutiny and criticism easy. It can of course be

*P. Excluded and Partially Excluded Areas — I (reference to pages are to pages in the original reports.)

objected that criticism may be ignored and that the separate statement may therefore not serve any really useful purpose, but we nevertheless recommend the provision of a separate financial statement as likely to fulfil its purpose. We also recommend that the framing of a suitable programme of development, should be on the Government of Assam, either by statute or by an Instrument of Instructions, as an additional safeguard.

(c) **Central Subventions.**—While the Province may be expected to do its best to provide finances to the limit of its capacity, it seems to us quite clear that the requirements of the Hill Districts, particularly for development schemes, are completely beyond the present resources of Assam. Though the Districts are more developed than the Frontier Tracts in respect of which the Central Government has recognised the need for special grants for development, the position of the Hill Districts in comparison with the plains districts is not radically different. The development of the Hill Districts should for obvious reason be as much the concern of the Central Government as of the Provincial Government. Bearing in mind the special position of this province in respect of sources of central revenue, we consider that financial assistance should be provided by the Centre to meet the deficit in the ordinary administration of the districts on the basis of the average deficit during the past three years and that the cost of development schemes should also be borne by the Central Exchequer. We recommend statutory provisions accordingly.

(d) **Provincial Grants for the Local Councils.—**Some of our coopted Members have expressed the apprehension that the sources of revenue open to them may not provide adequate revenue for the administration of the District Council, particularly where there are Regional Councils. We have not made a survey of the financial position of the new councils and their requirements in the light of the responsibilities imposed on them but we recognise their claim for assistance from general provincial revenues to the extent that they are unable to raise the necessary revenue from the sources allotted to them for the due discharge of their statutory liabilities.

15. **CONTROL OF IMMIGRATION—**

The Hill People, as remarked earlier, are extremely nervous of outsiders, particularly non-tribals, and feel that they are greatly in need of protection against their encroachment and exploitation. It is on account of this fear that they attach considerable value to regulations like the Chin Hill Regulations under which an outsider could be required to possess a pass to enter the Hills territory beyond the Inner Line and an undesirable person could be expelled. They feel that with the disappearance of exclusion they should have powers similar to those conferred by the Chin Hills Regulations. The Provincial Government, in their view, is not the proper custodian of such powers since they would be susceptible to the influence of plains people. Experience in areas inhabited by other tribes shows that even where provincial laws conferred protection on the land they have still been subjected to expropriation at the hands of money-lenders and others. We consider therefore that the fears of the Hill People regarding unrestrained liberty to outsiders to carry on money lending or other non-agricultural professions is not without justification and we recognise also the depth of their feeling. We recommend accordingly that if the local council so decide by a majority of three fourths of their members, they introduce a system of licensing for money-lenders and traders. They should not of course refuse licences to existing money-lenders and dealers and any regulations framed by them should be restricted to regulating interest, prices or profit and the maintenance of accounts and inspection.

16. **MINES AND MINERALS—**

The present position is that except in relation to the Khasi States all powers are vested in the Provincial Government. The hill people

strongly desire that revenues accruing from the exploitation of minerals should not go entirely to the Provincial Government and that their Council should be entitled to the benefits also. In order to ensure this they demand that control should be vested in them in one way or another. We have considered this carefully keeping particularly in mind that the Khasi Hill States are now entitled to half the royalties from minerals and feel that the demand of the hills should be met, not by placing the management in their hands, but by recognising their right to a fair share of the revenue. The mineral resources of the country are limited and it is recognised by us that the issue of licences and leases to unsuitable persons is likely to result in unbusiness like working and devastation. We consider that the best policy is to centralise the management of mineral resources in the hands of the Provincial Government subject to the sharing of the revenue as aforesaid and also to the condition that no licences or leases shall be given out by the Provincial Government except in consultation with the local Council.

17. **LEGISLATION—**

The position under the Government of India Act, 1935, has already been described. It has been argued in some quarters that no provincial legislation should be applicable to the hills except with the approval of the Hill Council. This, we consider, is a proposition which cannot be acceded to without reservations. It is true that no legislation is now applicable without a notification by the Governor but the Governor in practice would apply the legislation unless there is a reason why it should not be applied, while the Council would probably be guided by other considerations. There are many matters in which the legislature has jurisdiction which has nothing to do with special customs in the hills and to provide that such legislation should not apply directly would only amount to obstruction or delaying the course of legislation which ought to be applied. It may also frustrate the application of a uniform policy through the whole province and subject everything to the limited vision of a local council. The Hill Districts will of course have their representatives in the provincial legislature and we feel that a bar should be placed only in the way of provincial legislation which deals with subjects in which the Hill Councils have legislative powers or which are likely to affect social customs and laws. We consider therefore that there is no need for a general restriction and we have provided accordingly for limited restriction in Clause L* of Appendix A to this Part. We have also included in this draft a clause concerning the drinking of rice-beer which is very much a part of the hill people's life. We feel that the Council should have liberty to permit or prohibit this according to the wishes of the people. We would draw attention to the fact that the rice-beer (Zu or Laopani) is not a distilled liquor and that its consumption is not deleterious to the same extent as distilled liquor consumed by tribes in other areas.

18. **REGIONAL COUNCILS—**

The conditions obtaining in the Naga Hills and the North Cachar Hills, in particular, need special provision. The Naga Hills are the home of many different tribes known by the general name of Naga; in the North Cachar Hills, there are Naga, Cachari, Kuki, Mikir and some Khasi or Synteng. Other Hills also contain pockets of tribes other than the main tribe. The local organisations referred to earlier have themselves found the need for separate Sub-Councils for the different tribes and the condition are such that unless such separate councils are provided for the different tribes may not only feel that their local autonomy is encroached upon but there is the possibility of friction also. We have therefore provided for the creation of Regional Councils, if the tribes so desire. These Regional Councils will have powers limited to their customary law and management of their land villages. We also propose that the Regional Councils shall be able to delegate their powers to the District Councils.

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*Reference to pages are to pages in the original reports.

19. **EMERGENCY PROVISIONS—**

The picture drawn thus far is therefore that of an autonomous Council for the district with powers of legislation over the land, village, forests, social customs, administration of local law, powers over village and town committees, etc., with corresponding financial powers. These are far in excess of the powers of Local Boards. What if the Council or the executive controlled by it should misuse the powers or prove incapable of reasonably efficient management? Some of the Hill Districts are on the borders of India. What if their acts prove prejudicial to the safety of the country? Experience all over the country indicates that local bodies sometimes mismanage their affairs grossly. We consider that the Governor should have the power to act in an emergency and to declare an act or resolution of the Council illegal or void, if the safety of the country is prejudiced, and to take such other action as may be necessary. We also consider that if gross mismanagement is reported by a Commission, the Governor should have powers to dissolve the Council subject to the approval of the Legislature before which the Council, if so it desires, can put its case. (See Clause Q of Appendix A*).

20. **THE FRONTIER TRACTS—**

(a) **Central Administration recommended**.—We have indicated the difference between the Frontier Tracts and other Hill Areas already. It is clear that the legal position on the Balipara and Sadiya Frontier Tracts is that they are part of the province right up to the MacMahon Line. Regular provincial administration is however not yet possible (except perhaps in the plains portion before the Inner Line) on account of the circumstances prevailing there. The policy followed in these tracts as well as on the Tirap Frontier (where there is no delineated frontier with Burma yet) and the Naga Tribal Area is that of gradually extending administration. We recommend that when the Central Government which now administers these areas (and which we consider it should continue to do with the Government of Assam as its agent) is of the view that administration has been satisfactorily established over a sufficiently wide area, the Government of Assam should take over the administration of that area by the issue of a notification. We also recommend that the pace of extending administration should be greatly accelerated and that in order to facilitate this, steps should be taken to appoint separate officers for the Lohit Valley, the Siang Valley and the Naga Tribal area which at present is in the jurisdiction of two different officers (the Political Officer, Tirap Frontier Tract and the Deputy Commissioner, Naga Hills District). We have provided that the administration of the areas to be brought under the provincial administration in future should also be similar to that of existing Hill Districts.

(b) **Lakhimpur Frontier and Plains Portions**.—Regarding the Lakhimpur Frontier Tract, is appears to be the view of the External Affairs Department that this Tract does not differ from the plains "and need not be considered in relation to the problems of the hill tribes." Our information goes to show that a portion of the Lakhimpur Frontier Tract was recently (during the war) included in the Tirap Frontier Tract. The view of the Political Officer regarding this portion differed from that of other witnesses and the circumstances here seem to need closer examination, as the Political Officer has stated that the area is inhabited by tribes people. There are certain Buddhist villages inhabited by Fakials who should be brought into the regularly administered area if possible. About the Lakhimpur Frontier Tract which is under the Deputy Commissioner Lakhimpur we have no hesitation in recommending that it should be attached to the regular administration of the District. The report of the Deputy Commissioner produced before us in evidence is clear on the point. We also conclude from the evidence collected at Sadiya that the Saikhoaghat portion of the

*Reference to pages are to pages in the original reports.

excluded area south of the Lohit river and possibly the whole of the Sadiya plains portion up to the Inner Line could be included in regular administration, but feel that the question needs more detailed investigation and recommend that it should be undertaken by the Provincial Government. The portion of the Balipara Frontier Tract round Charduar should be subjected to a similar examination, and the headquarters of the Political Officer of this tract should be shifted into the hills as early as possible.

(c) **Posa Payments.—**Certain payments are being made at present to the tribes on the North East Frontier. In the Balipara Frontier Tract payments called *posa* which total in all to about Rs. 10,000 per year, and certain customary presents are paid. These are vestigial payments of sums which the tribes used to claim in the days of the Ahom kings whether by way of *quid pro quo* for keeping the peace on the border and not raiding the plains or in recognition of a customary claim on the local inhabitants or territory. On the Tirap Frontier a payment of Rs. 450 per year is made to the Chief of Namsang as lease money for a tea garden. We have considered the question whether these payments should be continued in view of the costly development schemes being undertaken, and have come to the conclusion that it would be a mistake to stop them. The effect upon the tribes of such a step would be the feeling that the first act of the new Government was adverse to them and the result of any disaffection in this area might seriously jeopardise our aims of establishing administration and bringing the tribes, who are well disposed at present, into the fold of civilisation within our boundaries. The payments are negligibly small in comparison with the large sums of money required for these areas and we recommend that they should continue unchanged at any rate till there is a suitable opportunity for a review of the position.

21. **REPRESENTATION—**

(a) **Adult Franchise.—**The partially excluded areas are already represented in the provincial legislature. In the Garo Hills and Mikir Hills the franchise as already stated is are stricted one. The excluded areas have no representation at present. So far as the frontier tracts tribal areas are concerned they have no representation and the circumstances are such that until it is declared that an area is or can be brought under regular administration, representation cannot be provided. We are of opinion that examination should be made as soon as possible of this question in view of the very clear desire expressed by the Abor, Hkampti and others for representation. Meanwhile, we are of the view that there is no longer any justification for the exclusion of the Naga, Lushai and North Cachar Hills and that these areas should be represented in the provincial legislature. The restriction on the franchise in the Garo and Mikir Hills should be removed and, if there is universal adult franchise else where, that system should be applied to all these Hills. We would note here that our colleagues from the Lushai Hills expressed some doubts about the feasibility of adult franchise in the Lushai Hills and seemed to prefer household franchise. We do not anticipate any real difficulty in adult franchise here if it is feasible elsewhere but would recommend that the position of the Lushai Hills may be considered by the appropriate body which deals with the question of franchise.

(b) **Provincial Representation.—**As regards the number of representatives of the Hill Districts in the provincial legislature, we are of the view that if the principle of weight age is recognised for any community, the case of the hill people should receive appropriate consideration in that respect. Though we do not propose that there should be any weight- age for the hill people as a principle, we are clear that the number of representatives for each of the Hill Districts should not be less in proportion to the total number than the ratio of the population of the district to the total population even though this may, in some cases, mean a slightly weighted representation in practice. In the draft provincial constitution we find that it is provided that the scale of representation

in the provincial Assembly is not to exceed one representative for every lakh of the population. On this basis, the Hill Districts would, according to the minimum recommended by us, obtain representation as follows:—

	No.	Population
Khasi & Jaintia Hills	2	105,463
Garo Hills	3	223,569
Mikir Hills	2	149,746
Naga Hills	2	189,641
Lushai Hills	2	152,786
North Cachar Hills	1	37,361
TOTAL	12	858,566

It will be seen if the total population of the Hills is taken, the number of representatives for all the Hills will be somewhat in excess of the number which would be arrived at on the basis of one representative for each lakh of the population. We are not only of the view that in the special circumstances of the Hills, representatives as recommended by us is necessary to provide proper representation but that the excess should not be adjusted to the detriment of the rest of Assam out of the total number admissible under Section 19(2) of the Draft Provincial Constitution. We have provided accordingly that in reckoning the number of representatives for the rest of Assam, the population and the number of representatives of the Hills shall not be taken into account. We contemplate that the Khasi and Jaintia Hills should include the Municipality and Cantonment of Shilling which is at present a general constituency. This will be an exception to the provision barring non-tribals from election in the Hill constituencies.

(c) **Federal Legislature.**—The total population of the Hill Districts given above clearly justifies a seat for the Hill Tribes in the Federal Legislature on the scale proposed in Section 13(c) of the Draft Union Constitution.

(d) **Joint Electorate.**—The Hill Districts have this simple feature, that their populations are almost entirely tribal. In the Khasi and Jaintia Hills (a pocket of Mikir excepted) in the Garo Hills, the Mikir Hills (some Rengma and Kuki excepted) the population is uniform. In the Naga Hills, among the different tribes like the Angami, Ao, Sema, there is now the beginning of a feeling of unity. The Naga Hills District has a population of 1.85 lakhs and is likely to get two representatives at least which might enable the allocation of one each to the two main centres of Kohima and Mokokehung. In the North Cachar Hills the position is less satisfactory but in all these areas we consider that the electorate should be joint for all the tribes and non-tribal residing there. In view of the preponderance of tribal people we consider that no reservation of seats is necessary and the only condition which we propose is that the constituencies should not overlap across the boundaries of the district (in the case of North Cachar, the subdivision).

(e) **Non-Tribals Barred.**—We have considered question of non-tribals residing permanently in the hills. Some of these have been in residence for more than one generation and may well claim the right to stand for election but we find that the feeling against allowing them to stand for election is extremely strong. It is felt that even though in a predominantly tribal constituency the chances are all in favour of a tribal candidate, the non-tribals, in view of their greater financial strength can nullify this advantage. We recommend therefore that plains people should not be eligible for election to the provincial legislature from the Hill Constituencies.

22. **THE PROVINCIAL MINISTRY**—

That the Hills can already provide representatives who can take part in the provincial administration is obvious. On four occasions residents of the Khasi Hills have occupied a place in the provincial Executive Council or Cabinet. The hitherto excluded Lushai and Naga Hills have the same potentiality. With Ministers from the Hills in the Cabinet

it may be expected indeed that their interests will not be neglected. The doubts raised are: will there necessarily be a Minister from the Hills even when a suitable person is available? If not who will look after interest of the Hills? The Hill areas contain close upon a million people and in view of the great importance of the frontier hills in particular, it would be wise of any Ministry to make a point of having at least one colleague from the Hills. It is our considered view that representation for the Hills should be guaranteed by statutory provision if possible. If this is not possible, we are of the view that a suitable instruction should be provided in the instrument of instructions or corresponding provision. The development of the Hills however is a matter which requires special attention in the interests of the province and we feel that if the circumstances necessitate it, the Governor should be in a position to appoint a special Minister who should, if possible, be from among the hill people. In this connection we would refer to the need for a special development plan which we have referred to in Para. *16(*b*).

23. **THE SERVICES**—

A good deal of discussion has centred round the problem of providing suitable officials for the hills. The number of suitably qualified candidates from the hill people themselves has been inadequate hitherto and the utilisation of other candidates has of course been found necessary. No special service has been considered necessary for the hills. On the other hand there has been a certain amount of feeling against the plains officials notably against inferior staff, who have been posted there. We have considered this question carefully and come to the conclusion that no separate service for the Hills is desirable or necessary and that there should be free interchange between hill and non-hill officials, at least in the higher cadres of the provincial and All India Services. The District Councils will doubtless appoint all their staff from their own people and to prevent interchangeability would be tantamount to perpetuating exclusion as our proposals involve a good deal of separation already. We recommend therefore that while non-tribal officials should be eligible for posting to the hills and *vice versa* should be selected with care. We also recommend that in recruitment the appointment of a due proportion of hill peoples should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government.

24. **A COMMISSION**—

We have referred to the need for special attention to the development of the Hills. No statutory provision for the earmarking of adequate funds is considered possible. On the other hand, the Hill Councils recommended by us will have far greater powers than local bodies in plains districts. The Hills occupy a position of strategic importance and it is in our opinion of great importance for constant touch to be maintained with the development and administration of these areas. For this purpose we consider that there should be provision for the appointment of a Commission, on which we expect that there will be representatives of the tribes, to examine the state of affairs periodically and report. We recommend that there should be provision to appoint the Commission *ad hoc* or permanently and that the Governor of the province should have the responsibility and power for appointing it. The report of the Commission should enable the Government to watch the progress of the development plan and take such other administrative action as may be necessary.

25. **PLAINS TRIBALS**—

The total tribal population of Assam was shown in the Census of 1941 as 2,484,996. The excluded and partially excluded areas contribute to this only 863,248. About 1.6 million tribals therefore live in the plains including those who work as tea-gardens labour. The terms of our enquiry are that we report on a scheme of administration for the tribal and excluded areas and the question of tribes people in the plains strictly does not concern us.

*Reference to para is to para in the original reports.

Their case will doubtless be dealt with by the Minoritie Sub-Committee. The population of the plains tribals which is being gradually assimilated to the population of the plains, should for all practical purposes be treated as a minority. Measures of protection for their land are also in our view necessary. At present certain seats are reserved in the Provincial legislature for them. The question of their representation and protection will we hope be considered by the Minorities Sub-Committee. We have kept in mind however the possibility of there being certain areas inhabited by tribals in the plains or at the foot of the hills whom it may be necessary to provide for in the same manner [*See* Clause* A (3) of Appendix A].

26. **BOUNDARIES—**

All the Hills people have expressed a desire for the rectification of district boundaries so that people of the same tribe are brought under a common administration. We sympathise with this desire but find that it is only out side our terms of reference but also that it would necessitate an amount of examination which would make it impossible for us to submit our report to the Advisory Committee in time. The present boundaries have, we find, been in existence for many years and we feel that there is time for a separate commission set up by the Provincial Government to work on the problems involved. An exception should however be the case of the Barpathar and Sarupathar mauzas included in the Mikir Hills which the Provincial Government have already decided should be removed from the category of excluded and added to the regularly administered areas (*see* memorandum of Government of Assam). We agree with this recommendation and propose that it should be given effect when the new Constitution comes into force.

27. **NON-TRIBAL RESIDENTS—**

In the Hill Districts, a certain number of non-tribal people reside as permanent residents. They generally follow non-agricultural professions but some cultivate land also. We have recommended that these residents should not be eligible to stand for election to the provincial legislature. It is necessary however to provide them with representation in the local council if they are sufficiently numerous. We contemplate that constituencies may be formed for the local councils if the number of residents is not below 500 and that non-tribal constituencies should be formed where this is justified.

28. **DRAFT PROVISIONS—**

For the sake of convenience we have condensed most of our recommendations into the forms of a draft of provisions in roughly legal form and this draft will be found as an appendix to this part. The draft also contains certain incidental provisions including finance not referred to in this report.

29. **TRANSITIONAL PROVISIONS—**

Reference has been made to the constitutions drafted in the different district for their local councils. This is of course the expression of the strong desire for autonomy in the Hill District. Rather more important however are the individualities of the different tribes and the distinctness of their customes and social systems. If the tribes are allowed to decide the composition and powers of their own councils it will doubtless afford them the maximum of sentimental satisfaction and conduce also to the erection of a mechanism suited without question for their own needs and purposes. While therefore it will be necessary in the existing conditions for the Governor of Assam (as the functionary who will carry on the administration till the new constitution comes into force) to frame provisional rules for holding elections and constituting the councils. We recommend that the councils thus convened should be provisional councils (one year) and that they should frame their own constitution and regulations for the future.

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* Reference to clause is to clause in original report.

APPENDIX C

[Annexure V]

APPENDIX A* TO PART OF NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEE REPORT

A (1). The areas included in Schedule* A to this Part shall be autonomous districts.

(2) An autonomous district may be divided into autonomous regions.

(3) Subject to the provisions of section P the Government of Assam may from time to time notify any area not included in the said schedule as an autonomous district or as included in an autonomous district and the provisions of this Part shall thereupon apply to such area as if it was included in the said schedule.

(4) Except in pursuance of a resolution passed by the District Council of an autonomous district in this behalf the Government of Assam shall not notify any district specified or deemed to be specified in the schedule or part of such district, as ceasing to be an autonomous district or a part thereof.

B (1). There shall be a District Council for each of the areas specified in Schedule* A. The Council shall have not less than twenty nor more than forty members, of whom not less than three-fourths shall be elected by universal adult franchise.

Note.—If adult franchise is not universally adopted this provision will have to be altered.

(2) The constituencies for the elections to the District Council shall be so constituted if practicable that the different tribals or non-tribals, if any, inhabiting the area shall elect a representative from among their own tribe or group :

Provided that no constituency shall be formed with a total population of less than 500.

(3) If there are different tribes inhabiting distinct areas within an autonomous district, there shall be a separate Regional Council for each such area or group of areas that may so desire.

(4) The District Council in an autonomous district with Regional Council shall have such powers as may be delegated by the Regional Council in addition to the powers conferred by this constitution.

(5) The District or the Regional Council may frame rules regarding (a) the conduct of future elections, the composition of the Council, the office bearers who may be appointed, the manner of their election and other incidental matters, (b) the conduct of business, (c) the appointment of staff, (d) the formation and functioning of sub ordinate local councils or boards, (e) generally all matters pertaining to the administration of subjects entrusted to it or falling within its powers :

Provided that the Deputy Commissioner or the Sub-divisional officer as the case may be of the Mikir and the North Cachar Hills shall be the Chairman *ex-officio* of the District Council and shall have for a period of six years after the constitution of the Council, powers subject to the control of the Government of Assam to annual or modify any resolution or decision of the District Council or to issue such instructions as he may consider appropriate.

C (1). The Regional Council, or if there is no Regional Council, the District Council, shall have power to make laws for the area under its jurisdiction regarding (a) allotment, occupation or use for agricultural, residential or other non-agricultural purposes, or setting apart for grazing, cultivation, residential or

* References to appendices and schedules are to appendices and schedules in the original reports.

other purposes ancillary to the life of the village or town, of land other than land classed as reserved forest under the Assam Forest Regulation, 1891 or other law on the subject applicable to the district.

Provided that land required by the Government of Assam for public purposes shall be allotted free of cost if vacant, or if occupied, on payment of due compensation in accordance with the law relating to the acquisition of land, (b) the management of any forest which is not a reserve forest, (c) the use of canal or water courses for the purposes of agriculture, (d) controlling, prohibiting or permitting the practice of *jhum* or other forms of shifting cultivation, (e) the establishment of village or town committees and council and their powers, (f) all other matters relating to village or town management, sanitation, watch and ward.

(2) The Regional Council or if there is no Regional Council, the District Council shall also have powers to make laws regarding (a) the appointment or succession of chiefs or headmen, (b) inheritance of property, (c) marriage and all other social customs.

D (1). Save as provided in Section F the Regional Council, or if there is no Regional Council, the District Council, or a court constituted by it in this behalf shall have all the powers of a final court of appeal in respect of cases or suits between parties, all of whom belong to hill tribes, in its jurisdiction.

(2) The Regional Council, or if there is no Regional Council the District Council, may set up Village Councils or Courts for the hearing and disposal of disputes or cases other than cases tribal under the provisions of Section F, or cases arising out of laws passed by it in the exercise of its powers, and may also appoint such officials as may be necessary for the administration of its laws.

E. The District Council of an autonomous district shall have the powers to establish or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways and in particular may prescribe the language and manner in which primary education shall be imparted.

F (1). For the trial of acts which constitute offences punishable with imprisonment for five years or more or with death, or transportation for life under the Indian Penal Code or other law applicable to the district or of suits arising out of special laws or in which one or more of the parties are non-tribals, the Government of Assam may confer such powers under the Criminal Procedure Code or Civil Procedure Code as the case may be on the Regional Council, the District Council or Courts constituted by them or an officer appointed by the Government of Assam as it deems appropriate and such courts shall try the offences or suits in accordance with the Code of Criminal Procedure or Civil Procedure as the case may be.

(2) The Government of Assam may withdraw or modify powers conferred on the Regional Council or District Council or any court or office under this section.

(3) Save as provided in this section the Criminal Procedure Code and the Civil Procedure Code shall not apply to the autonomous district.

Note.—"Special Laws"—Laws of the type of the law of contract, company law or insurance etc. are contemplated.

G (1). There shall be constituted a District or Regional Fund into which shall be credited all moneys received by the District Council or Regional Council as the case may be in the course of its administration or in the discharge of its responsibilities.

(2) Rules approved by the Comptroller of Assam shall be made for the management of the Fund by the District or Regional Council and management of the Fund shall be subject to these rules.

H (1). A Regional Council, or if there is no Regional Council the District Council shall have the following powers of taxation:

(*a*) subject to the general principles of assessment approved in this behalf for the rest of Assam, land revenue, (*b*) poll tax or house tax.

(2) The District Council shall have powers to impose the following taxes, that is to say (*a*) a tax on professions, trades or calling, (*b*) a tax on animals, vehicles, (*c*) toll tax (*d*) market dues, (*e*) ferry dues, (*f*) cesses for the maintenance of schools, dispensaries or roads.

(3) A Regional Council or District Council may make rules for the imposition and recovery of the taxes with in its financial powers.

I (1). The Government of Assam shall not grant any licence or lease to prospect for or extract minerals with in an autonomous district save in consultation with the District Council.

(2) Such share of the royalties accuring from licences or leases for minerals as may be agreed upon shall be made over to the District Council. In default of agreement such share as may be determined by the Governor in his discretion shall be paid.

J (1). The District Council may for the purpose of regulating the profession of money lending or trading by non-tribals in a manner detrimental to the interests of the tribals make rules applicable to the district or any portion of it: (*a*) prescribing that except the holder of a licence issued by the Council in this behalf no person shall carry on money lending, (*b*) prescribing the maximum rate of interest which may be levied by a moneylender, (*c*) providing for the maintenance of accounts and for their inspection by its officials, (*d*) prescribing that no non-tribal shall carry on wholesale or retail business in any commodity except under a licence issued by the district council in this behalf:

Provided that no such rules may be made unless the District Council approves of the rules by a majority of not less than three-fourths of its members:

Provided further that a licence shall not be refused to money lenders and dealer carrying on business at the time of the making of the rules.

K (1). The number of members representing an autonomous district in the Provincial Legislature shall bear at least the same proportion to the population of the district as the total number of members in that Legislature bears to the total population of Assam.

(2) The total number of representatives allotted to the autonomous districts (which may at any time be specified in Schedule A*) in accordance with Sub-section (1) of this Section shall not be taken into account in reckoning the total number of representatives to be allotted to the rest of the Province under the provisions of Section. . . . . .
. of the Provincial Constitution.

(3) No constituencies shall be formed for the purpose of election to the Provincial Legislature which include portions of other autonomous districts or other areas nor shall any non-tribal be eligible for election except in the constituency which includes the Cantonment and Municipality of Shillong.

L (1). Legislation passed by the provincial legislature in respect of (*a*) any of the subjects specified in section C or

(*b*) prohibiting or restricting the consumption of any non-distilled alcoholic liquor, shall not apply to an autonomous district.

(2) A Regional Council of an autonomous district or if there is no Regional Council, the District Council may apply any such law to the area under its jurisdiction, with or without modification.

M. The revenue and expenditure pertaining to an autonomous district which is credited to or met from the funds of the Government of Assam shall be shown separately in the annual financial statement of the Province of Assam.

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* Reference to Schedule is to Schedule in the original report.

N. There shall be paid out of the revenues of the Federation to the Government of Assam such capital and recurring sums as may be necessary to enable that Government—(*a*) to meet the average excess of expenditure over the revenue during the three years immediately preceding the commencement of this constitution in respect of the administration of the areas specified in Schedule A; and (*b*) to meet the cost of such schemes of development as may be undertaken by the Government with the approval of the Federal Government for the purpose of raising the level of administration of the aforesaid areas to that of the rest of the province.

O (1). The Governor of Assam may at any time institute a commission specifically to examine and report on any matter relating to the administration or, generally at such intervals as he may prescribe, on the administration of the autonomous districts generally and in particular on (*a*) the provision of educational and medical facilities and communications (*b*) the need for any new or special legislation, and (*c*) the administration of the District or Regional Councils and the laws or rules made by them.

(2) The report of such a commission with the recommendations of the Governor shall be placed before the Provincial legislature by the Minister concerned with an explanatory memorandum regarding the action taken or proposed to be taken on it.

(3) The Governor may appoint a special Minister for the autonomous Districts.

P (1). The Government of Assam may, with the approval of the Federal Government, by notification make the foregoing provisions or any of them applicable to any area specified in Schedule B* to this part, or to a part thereof; and may also, with the approval of the Federal Government, exclude any such area or part thereof from the said Schedule.

(2) Till a notification is issued under this section, the administration of any area specified in Schedule B* or of any part thereof shall be carried on by the Union Government through the Government of Assam as its agent.

Q (1). The Governor of Assam in his discretion may, if he is satisfied that any act or resolution of a Regional or District Council is likely to endanger the safety of India, amend or suspend such act or resolution and take such steps as he may consider necessary (including dissolution of the Council and the taking over of its administration) to prevent the commission or continuation of such act or giving effect to such resolution.

(2) The Governor shall place the matter before the legislature as soon as possible and the legislature may confirm or set aside the declaration of the Governor.

R. The Governor of Assam may on the recommendation of a commission set up by him under section N order the dissolution of a Regional or District Council and direct either that fresh election should take place immediately, or with the approval of the legislature of the province, place the administration of the area directly under himself or the Commission or other body considered suitable by him, during the interim period or for a period not exceeding twelve months.

Provided that such action shall not be taken without affording an opportunity to the District or Regional Council to be heard by the provincial legislature and shall not be taken if the provincial legislature is opposed to it.

Transitional Provisions:

Governor to carry on administration as under the 1935 Act till a Council is set up, he should take action to constitute the first District Council or Regional Council and frame provisional rules in consultation with existing tribal Councils

* Reference to Schedule is to Schedule in the original report.

or other representative organisations, for the conduct of the elections, prescribed who shall be the office bearers, etc. The term of the first Council to be one year.

GOPINATH BARDOLOI
(Chairman).
J. J. M. NICHOLS-ROY.
RUP NATH BRAHMA.
A.V. THAKKAR.

Schedule A

The Khasi and Jaintia Hills District excluding the town of Shillong.
The Garo Hills District.
The Lushai Hills District.
The Naga Hills District.
The North Cachar Sub-division of the Cachar District.

The Mikir Hills portion of Nowgong and Sibsagar District excepting the mouzas of Barpathar and Sarupathar.

Schedule B

The Sadiya and Balipara Frontier Tracts.
The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract).
The Naga Tribal Area.

APPENDIX C

[Annexure VI]

Copy of Notification No. 1-X, dated the 1st April 1937, from the Government of India in the External Affairs Department.

In exercise of the powers conferred by sub-section (1) of Section 123, read with sub-section (3) of Section 313, of the Government of India Act, 1935, the Governor General in Council is pleased to direct the Governor of Assam to discharge as his agent, in and in relation to the tribal areas beyond the external boundaries of the Province of Assam, all functions hitherto discharged in and in relation to the said areas by the said Governor as Agent to the Governor-General in respect of the political control of the trans-border tribes, the administration of the said areas and the administration of the Assam Rifles and other armed civil forces.

APPENDIX C

[Annexure VII]

REPORT OF THE NORTH-EAST FRONTIER (ASSAM) TRIBAL AND EXCLUDED AREAS SUB-COMMITTEE

Part II

1. **THE BALIPARA FRONTIER TRACT—**

This is the tract between the Subansiri River on the east, Bhutan on the west and the Mac Mahon Line to the north, with its headquarters at Charduar about 20 miles from Tezpur. It is included in the Schedule to the Government of India (Excluded and Partially Excluded Areas) Order as an Excluded Area, but in practice it is administered by the Governor of Assam as the Agent to the Government of India and is treated in this respect as a tribal area. The portion immediately to the north of Charduar and up to the Inner Line is a plains portion the area of which is

estimated to be approximately 1,000 square miles. The censused portion of the area was 571 square miles and the population of 6,512 contained only 560 Dafla, the remaining number of 2,323 persons enumerated as Assam tribes consisting of Cachari, Garo, Mikir and Miri. The area beyond the Inner Line is estimated to cover about 11,000 square miles and contain a population of approximately 350,000. For administrative purposes it is at present divided into two parts, the Balipara or Sela Agency and the Subansiri Area under two Political Officers. Particularly in the Subansiri Area there are portions which have not yet been explored by our officers, and the details of the tribes living there are still not fully known. In the Sela area administration has been extended as far as Dirang Dzong and this area contains tribes like the Momba, Sillung, Aka or Rhuso, Senjithonji. The Subansiri area is inhabited largely by Dafla (Nisu) and Apatani but large areas have yet to be visited and explored.

In the western portions of the tract the way of life of the tribes is influenced a good deal by Tibetan customs and Buddhist monastaries but in the eastern sector the people are much more primitive. Some terraced cultivation and orange gardens exist but people like the Aka depend on *jhuming*. Literacy among the tribes seems to be very poor in spite of the influence of monastaries. Except among the Momba there is little demand even for education. For their requirements of cloth and salt notably the in habitants depend upon contact with the plains areas or with the Tibetans. The monastery at Towang exercises considerable influence over the lives of these tribes and puts forward claims to monastic taxation. The tribes keep poultry, pigs, goats and mithun. In the olden days some chiefs here apparently used to exercise a kind of right of levying taxes in plains villages. This appears to have been recognised by the Ahom Kings who allowed relief to the people liable to such taxes from other taxes to a corresponding extent. In connection with these levies an agreement* was entered in to by the British Government for the payment of an annual subsidy, known as *posa.* Rs. 5,000 are paid to the Talung Dzongpons and the Sat Rajas of Kalaktang and some bottles of rum and cloth also are given. The tribes in return also given certain presents like ebony, a gold ring, two Chinese cups, two yak tails and two blankets. Similar payments of *posa* are made to the Chaduar Bhutia or Sherdukpen, Thembangia Bhutia, Aka and certain other tribes. Payments to the Dafla and Miri are however made only to freemen and in all cases cease on the death of the present holder. The total payment of *posa* comes to about 10,000 rupees per year. Maintenance of law and order in this area as well as defence against external encroachment is looked after by the posts occupied by the Assam Rifles.

Though some of the witnesses who appeared before us could speak Assamese and appeared to be intelligent, we are inclined to agree with the Political Officer's view that until the five-year plan which provides for an expansion of schools and communications has been given effect, there is likely to be little material in this Tract particularly in the Subansiri Area, for local self-governing institutions. For some time the problems of administration here must remain confined largely to the maintenance of peace among the tribes, prevention of encroachment and oppression by Tibetan tax collectors, extension of communications, and elementary facilities for obtaining medicine and primary education. Tibetan officials are known to have set up trade blocks with a view to compelling trade with Tibet rather than India and the removal of these obstructions is a matter which may involve political contact with Tibetan authorities. As already pointed out large areas are as yet *terra incognita* to our officers and the attitude of the tribes is one of fear or suspicion which may

* Clause IV of Agreement No. XLIV of 1888 with the Kapaschor or Kavatsun Akas runs as follows:— The "posa" we shall receive from Government is in lieu of the due we formerly levied on the Assamese inhabitants of the plains, and that we have no right to receive any food, service, dues or other token of superiority from any receipt in British territory. . . .

easily turn to hostility. It is clear however that the southern portions of the tract will develop earlier than the northern most portions and administration of the political agency type can therefore be gradually shifted northwards. The Political officers' view is that the time is not yet ripe for shifting his headquarters from Charduar to a place in the hills. The area round Charduar which is in the plains portion is inhabited mostly by non-tribals or detribalised people of tribal origin. The question of bringing it under regular administration needs therefore to be examined in detail by the Provincial Government. What we contemplate is that areas over which adequate control has been established should be brought under the regular provincial administration while areas further north remain under the control of the Central Government, as at present. The Centre should however administer the tract through the Provincial Government as its agent so that the Provincial Government remains in contact with the administration*.

We are also of the view that steps should be taken as soon as practicable to erect boundary pillars on the trade routes to Tibet at places where they intersect the MacMahon Line.

The payments of *posa* represent a small amount and the sentimental value attached to it and the probability that any cessation of it concurrently with the coming into force of the new constitution would have most undesirable consequences on the attitude of the tribes, should be kept in mind. It should clearly not be discontinued for the present.

2. **THE SADIYA FRONTIER TRACT**—

The Sadiya Frontier Tract is the tract between the Subansiri river on the west and the boundary of the Tirap Frontier Tract on the north-east. The latter boundary has been adjusted from time to time. The Frontier are a comprising the Sadiya and Tirap Frontier Tracts is somewhat in the shape of parabola which contains the area through which the Brahmaputra river with its tributaries debouches on to the plains. The Sadiya tract may be regarded as falling into two or three distinct portions. To begin with, there is the portion to the west consisting of the valley of the Dibang or Siang with Abor tribes like Minyong, Bori, Galong, Padam. The Valley of the Dibang in the centre covers the area inhabited by Idu or Chulikata Mishmi, and the valley of the Lohit is inhabited by Digaru and other Mishmi and certain Hkampti and Miri tribes. Included in these three broad divisions is the plains portion of the tract (which includes Saikhoaghat on the south bank of the Lohit river) which runs up to the foot of the hill (roughly along the Inner Line). As in the case of the Balipara tract, regular administration has yet to be established in portions up to the MacMahon Line, which itself needs to be demarcated by the erection of boundary pillars at least at the points where the trade routes cross into India. The headquarters of the Political Officer is at Sadiya and there is an Assistant Political Officer at Pasighat.

The Assistant Political Officer of the Lohit Valley stays at Sadiya and his jurisdiction includes the Chulikata or Idu Mishmi in the north and the Digaru and others towards the east and south of the tract. There are no easy lateral communications between the Chulikata area and the Lohit Valley proper.

By inhabitants, the hill tract falls broadly into portions inhabited by Abor (Siang Valley) the Chulikata in the Dibang Valley and other Mishmi in the Lohit Valley, and the Hkampti or Shan who are a comparatively civilised tribe following Buddhism. In addition there is the mixed population of the Sadiya portion to the south of Inner Line containing non-tribals and some Miri. Although the Gallong Abor are somewhat different from the Padam and Minyong the languages are practically the same and the whole of the Abor

*See Assam Government's Factual Memorandum on page 70 of Excluded and Partially Excluded Areas—I (C. A. Pamphlet); all references to pages are to pages in original reports.

Tract could be regarded as reasonably uniform. The Mishmi area, though it falls into two separate portions along the Dibang and Lohit Rivers respectively, and the tribes do not understand one an others language, could be treated as one. The Hkampti area which is the third one is small and the Sadiya population is a mixed one. The area beyond the Inner Line which is not censused is estimated to contain 250,000 Abor, 40,000 Idu, 25,000 Digaru and Miji and about 2,000 Hkampti. The censused portion is an area of 3,309 square miles with a total population of 60,118 of which 39,974 are of tribal origin.

That total area of the tract may be in the neighbourhood of 15,000 square miles and its development and administration clearly necessitate the sub-division of the tract and the appointment of more officials. In fact the Political Officer has already recommended the division of the tract into two portions based on Pasighat and Sadiya respectively. This is roughly equivalent to a division into the Mishmi area and the Abor area respectively and the proposals under consideration at present seem to contemplate the posting of a Political Officer at Sadiya for the Mishmi Agency with an Assistant with headquarters at Walong (Lohit Valley) and a second Political Officer at Pasighat (now the headquarters of an A.P.O.). The main reason for keeping Sadiya as the headquarters for the Mishmi Agency would appear to be the lack of lateral communications between the Chulikata area in the Dibang Valley and the Digaru area in the Lohit Valley. It is clear however that Sadiya and the portion up to the Inner Line is in the plains and contains a mixed population. Cultivation in this tract is also settled and the people of the tract desire that it should not continue under the present system of exclusion. Moreover, there is the area occupied by the Hkampti who are settled cultivators professing Buddhism which has also spread a good deal of literacy among them. *Prima facie* there is a strong case for treating the plains portion of the tract as well as the Hkampti portion as regularly administered areas in the form perhaps of a separate subdivision or district. The distinctness of the Hkampti must however be borne in mind and the area will probably have to be treated as a separate taluk. An early and detailed examination of the whole question is clearly called for. If Sadiya is treated as plain, suitable headquarters for the Political officer of the Mishmi Area needs to be looked for keeping in mind the difficulties of communication between the Dibang and Lohit valleys.

With the exception of the Hkampt is who are settled cultivators, and may be regarded as comparatively civilised, and a few people in the plains portion who also do settled cultivation, the Abor and Mishmi pursue *jhuming* and appear to exhibit little competence in the art of raising crops. They of course eke out a livelihood by keeping poultry, sheep and *mithun*. The herds of *mithun* kept by these tribes are in fact the occasion for disputes between people as raiding for *mithun* seems to be in this area what head-hunting is in the Naga tribal area. Serious quarrels arising out of raiding for *mithun* may call for the intervention of the Political Officer. The tribes are generally heavily addicted to opium and attempts to keep the growth and consumption of opium in check seem to be meeting with little success. Though we feel that the Abor and Mishmi are people who can be educated and assimilated to civilised administration in a comparatively short time, there is little literacy or education among them at present, and the depth of the area over which control has been established beyond the Inner Line does not seem to be great. Communications are the urgent need so that greater contact is possible even if the lack of education is regarded as no impediment. By the time the five year plan has been worked out (it contemplates the making of a road to Walong and improvement of communications in other respects also) it may be possible to give effect to the keenly expressed desire among the Abors of a share in the provincial administration. It is obvious that the pace of establishment of full-fledged administration in this area should be accelerated. A beginning should however be possible by way of political education of the people, if tribal councils are set

up to enable the different tribes to come together to discuss matters of mutual interest and understand the problems of administration.

The forests of this tract can produce a good revenue but land revenue in the plains portions amounts to about 50,000 and the poll tax which is also levied in this area amounts to about 15,000. This forest revenue in 1946-47 was 430,000.

3. **THE LAKHIMPUR AND TIRAP FRONTIER TRACTS—**

The exact position, legal and *de facto* is not clear. The Lakhmipur Frontier Tract is mentioned as one of the North-East Frontier Tracts scheduled as an excluded area. No frontier has as yet been laid down between Burma and India in this region. There is an area locally known as the Lakhmipur Frontier Tract which is treated as an excluded area with the Deputy Commissioner, Lakhmipur, as the Agent or Political Officer. The Tirap Frontier Tract, which apparently derives its name from the river of that name, is said at present to contain a number of villages added to it from the Lakhmipur Frontier Tract during the war, and the rest of the portion inhabited by Naga tribes towards the Burmese territory. In addition to the Tirap Frontier Tract the Political Officer, whose headquarters are at present in Margherita in Lakhmipur district, is also in charge of a portion of the Naga Tribal Area which stretches along the boundary of the Lakhmipur district till it touches the northern apex of the Naga Hills district boundary and then runs along the eastern boundary of the Naga Hills districts towards its southern projection towards Burma. The area of the Lakhmipur Frontier Tract as shown in the census is about 394 square miles. The area of the Tirap Frontier Tract can of course only be guessed as there is no definite boundary with Burma. It may be in the neighbourhood of 4,000 square miles. In population also the tract differs from part to part. The Lakhmipur Frontier Tract differs "in no way from the surrounding plains; possesses none of the characteristics of the hill areas and need not be considered in relation to the problems of the hill tribes". *In the portion of the Lakhimpur Frontier Tract which has now been taken into the Tirap Frontier Tract there are several villages inhabited by Kachins and others who are regarded as tribal and pay house tax. In the Tirap Frontier Tract a number of tribes classed as Naga such as Tikak, Yogli, Ranrang, Lungri, Sank-e, Mosang, Morang etc. reside. The whole of the area inhabited by the Naga tribes could appropriately be regarded as part of India since the economic relations of all these tribes are with India and not with any other country. The demarcation of a boundary with Burma is to be taken up therefore on this principal and the question is said to be now under consideration by the Government of India. It is obviously a matter which needs to be expedited.

In the northern portion of the Naga Tribal area (which may be really regarded as part of the Tirap Frontier, since for a considerable distance the boundary of this area runs along with the eastern boundary of Lakhimpur district) there are tribes classed as Konyak Naga and the relations of this area are also with the plains portion of the Lakhimpur district. For instance it is common for tribes from Namsang and Borduria to come frequently to Jaipur for their marketing etc., and a good number of them seem to speak Assamese. The area is thickly populated. The Singpho or Kachin are Buddhists and they had chiefs belonging to the old ruling family before the country was taken over in 1839. The agreements entered into in 1826 and 1836 are a dead letter and though the chiefs are consulted by the Political Officer whenever there is any dispute to be settled or other matter to be dealt with, the Political Officer is being looked up to more and more, and the chief is regarded only by way of being an adviser to the Political Officer.

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* *See* North East Frontier and Excluded Areas (C. A. Pamphlet) paragraph 5 (c); all references to pages are to pages in the original reports.

Agriculture is mostly by the primitive method of *jhuming* and there are no educational facilities. The economic condition of the tract is pretty poor. The Kachin however are settled cultivators and are in a better position than the Naga. In the Naga Tribal Area head hunting is still practised and slavery also seems to exist.

For the Tirap Frontier Tract also the five year plan approved by the Government of India contemplates the extension of the benefits of administration. The headquarters is proposed to be moved to a place in the interior called Horukhunma and hospitals and schools are to be constructed. Both in the Tirap Frontier Tract and the Naga tribal area the policy is just the same, namely the extension of administration gradually up to the Burma frontier. This policy appears to us to be the correct one to follow, whatever the legal status of the area may be under the Government of India Act. As in the case of the MacMahon Line frontier, all the portion between the Burmese boundary and the administered area of Assam should be merged in Assam as soon as possible and the distinction between Tribal Area and administered Indian territory abolished.

The Lakhimpur Frontier Tract need no longer be treated as an excluded area. As regards the portions of this tract taken over into the Tirap Frontier Tract the justification for continuing it as a frontier area needs to be further examined and if no difficulty is likely to be caused by the inclusion of the Kachins and other tribes who live there in the Lakhimpur district the area should be merged in the District. In the rest of the area, steps should be taken to organise non-statutory tribal councils, panchayats etc., in anticipation of the time when this tract will be fit for inclusion in the provincial administration. For the proper administration of the Naga Hills tribal area it would appear desirable to provide more officials, and a separate officer with headquarters as close as possible to the area, if not inside, is necessary. It would appear that there is already sanction for a separate Sub-divisional Officer at Mokokchung under the control of the Deputy Commissioner. Naga Hills district but the present arrangement by which the tribal area is shared between the Deputy Commissioner, Kohima, and the Political Officer. Tirap Frontier Tract, needs to be further examined. It would perhaps be best to divide the portion into two districts one which will in due course either merge with the existing Naga Hills district and form a Sub-division thereof or be a Konyak district, and another which will form a portion of another district under an officer with headquarters in the present Tirap Frontier Tract.

4. **NAGA HILLS DISTRICT—**

The Naga Hills District is an area of 4,289 square miles bounded on the east by the Naga tribal area, on the south by Manipur State and on the west by the Sibsagar District. The population was given as 189,641 of which 184,766 or 97.4 per cent were tribal, at the 1941 census. The district is inhabited by a number of Naga tribes notably the Angami, the Sema, the Lhota and the Ao. Of these tribes Angami are the most numerous and inhabit the area round Kohima, their number at the 1941 census being slightly over 52,000. The Aos are the next numerous numbering over 40,000 and the Semas come third with 35,741. These two tribes inhabit the area round Mokokchung which is a separate sub-division of the district, and the Sema also inhabit the region to the north-west of the Angami country. The tribes speak different languages and their *lingua franca* is Assamese or Hindustani. They have also differing customs and traditions. Areas claimed by the tribe or village are jealously guarded against encroachment and to such an extent in the Naga Tribal Area that a villager seldom ventures outside his village boundary. Within the boundary of the District proper there is generally speaking regular administration though during the war a slightly different atmosphere might have been introduced. Though the

percentage of literacy among male Naga is about 6 only, quite a good number of these have received high education. Female literacy among the Naga is however negligible, though in the Mokokchung Sub-division it was found to be nearly four per cent. Literacy seems to be higher in the Mokokchung area than the Kohima area and the demand for education is also keener here. As regards economic circumstances a good deal of terracing is done in the Angami areas and a number of Nagas seem to have taken up non-agricultural occupations—the planting of gardens, etc.

It has been mentioned that the district is inhabited by mutually exclusive, diverse tribes. A movement for unification has however been afoot in the last two or three years and a body known as the Naga National Council (with sub-councils of the different tribes) was formed in 1945. Though a non-official political organisation, many of its leaders and members are Government officials and the organisation has also received official recognition locally. Thus the anomalous position of Government servants participating in political activity exist and in part this situation is due to the fact, that the educated, influential and leading elements are Government servants. Though the formation of this Council may be taken as an indication that the unity of administration has given a sense of unity to the different tribes it would perhaps be a mistake to suppose that there has been any real consolidation, and the tenacity with which the tribes hold on to their own particular views of traditions is still a potent factor. A notable characteristic of Naga* tribes is that decisions in their tribal councils are taken by general agreement and not by the minority accepting the decisions of the majority. This feature, though perhaps well suited to village affairs, may lead to many an unsatisfactory compromise in matters of greater movement.

In June 1946, the Naga National Council passed a resolution expressing their approval of the scheme proposed by the Cabinet Mission in the State Paper of May 16, 1946, and their desire to form part of Assam and India. The resolution protested against the proposal to group Assam with Bengal. This resolution and the feeling which prompted it seems to have held the field throughout 1946, and the Premier of Assam who visited the district in November 1946 was greeted with the utmost cordiality. Early in 1947 the Governor of Assam, Sir Andrew Clow, visited the Naga Hills and advised the Nagas that their future lay with India and with Assam. Subsequently, towards the end of February 1947, the Naga National Council passed a resolution in which they desired the establishment of "an Interim Government of Nagas with financial provisions, for a period of ten years at the end of which the Naga people will be left to choose any form of Government under which they themselves choose to live." This resolution was of course completely different from the previous one in that it was based on the idea of being a separate nation and country. Subsequently the Naga National Council sent another memorandum in which they mentioned a "guardian power" without however stating who should be the guardian power, and it was found that they were extremely reluctant to express any choice openly between the three possibilities of the Government of India, the Provincial Government and H.M.G. It would appear that this was the formula on which a general measure of agreement could be obtained among the Nagas since there were clear indications that many of them were inclined to take moderate views more on the lines of the original resolution passed at Wokha but in view of the intransigeance of certain other members, probably of the Angami group, they were prevented from doing so.

Subsequent events connected with the visit of H. E. the Governor to the Naga Hills on the 26th of June 1946 show that the Nagas have dropped their

* Other tribes have this characteristic also in greater or lesser degree.

extreme demands. The substance of the claims made by the Nagas is now to maintain their customary laws and courts, management of their land with its resources, the continuance of the Regulations by which entry and residence in the Hills could be controlled and a review of the whole position after ten years.

5. **LUSHAI HILLS DISTRICT—**

This district has an area of 8,142 square miles and lies to the south of the Surma Valley. It forms a narrow edge-shaped strip of territory about 70 miles wide in the North tapering to almost a point at its southern extremity and separates Burma from the State of Tripura and the Chittagong Hill Tracts of Bengal on the east and south-east respectively. With the exception of a small area at its southern extremity which is inhabited by Lakher tribesmen, the rest of the district is inhabited by the tribes known as Lushai or Mizo and found elsewhere in North Cachar sub-division, and Manipur as Kuki. The communications with the main inhabited areas of Aijal (headquarters) and Lungleh are difficult and there is only a bridal path connecting Aijal with Silchar. From Serang, near Aijal, communication by river, along the Dhaleswari, is possible and Demagiri in the south is connected with Rangamati in the Chittagong Hill Tracts, by the Karnaphuli river. There is also a bridal path connecting Lungleh with Rangamati. The population of this district is 152,786 according to the last census and over 96 per cent of the population is tribal. The district as a whole is hilly, with a general elevation of between 3,000 and 4,000 feet and the slopes are usually quite steep.

Jhuming, with the exception of certain orange gardens, is the common form of cultivation, and terracing and wet cultivation present many difficulties. Spinning and weaving is a common cottage industry, and every woman in a Lushai household spins and weaves for the needs of the family. Most attractive tapestry work is done in these hills and the designs make a very colourful display. Much of the weaving and spinning is done however for personal use and not for sale. The degree of literacy in the area is very high; the reason for it being probably the fact that a large proportion of the population is Christian and the Sunday Schools have assisted the spread of literacy even among the adult men but, apart from a few Government servants, the number of people following non-agricultural occupations is negligible. The general level of intelligence and civilised behaviour in this area is high and compares favourably with most places in the plains.

There are no local self-governing institutions and village life is to a great extent dominated by the chief who is generally hereditary*. Formerly the number of chiefs was small, probably 50 or 60, but on account of the increase in population and the growth of new villages the present number is over 300. The chiefs settle disputes in the village, make a distribution of land for jhuming and generally carry out any orders issued to them by the officials including such work as collection of taxes. Of late the relations between the chiefs and the people has been rather strained, and it would appear that one reason for this is the convening of the so-called District Conference by the Superintendent of the Lushai Hills. The "Mizo Union" was started sometime ago by the people (including chiefs also as members) as a non-official organisation, with the consent of the Superintendent. This organisation seems to have been without a rival to begin with but in 1946 the Superintendent convened the District Conference with a membership of 40 of which 20 were commoners and 20 were chiefs. The District Conference was supposed to be elected by household franchise at the rate of one voter for every 10 houses and

* A certain number of non-hereditary appointments have been made of late by the Superintendent.

in the first conference, the chiefs and the people had separate electorates, that is the people elected their own representatives and the chiefs theirs. The conference apparently created little enthusiasm and the large representation of chiefs on it must have caused some dissatisfaction. The Superintendent was the President of the conference. Towards October 1946 this conference seems to have broken down and was virtually abandoned. Shortly before the visit of the Sub-Committee however fresh elections were held by the Superintendent. At this election a change was made in the franchise so that the separate electorate was abolished and chiefs and commoners voted jointly. The ratio of chiefs and commoners was however maintained and on this account the "Mizo Union" decided to boycott the elections with considerable effect on it. In fact it is claimed by the Mizo Union that only two or three hundred voters actually took part in the elections. However this might be, the convening of the District Conference which was claimed to be an elected body obviously brought it into rivalry with the Mizo Union, and since the conference was supported by the Superintendent, the Mizo Union incurred official disfavour.† The Superintendent being the President of the conference and the chiefs being largely under official control and influence, there was apparent justification for the suggestion that the District Conference was not representative of the views of the people. In fact the attitude of the Superintendent gave us very good reason to believe that the District Conference was completely dominated by him and was his mouthpiece. The Superintendent himself propounded a scheme before the Committee the purport of which was that all local affairs should be managed by a constitutional body elected by the District who would have their own officers appointed by themselves and that the Government of Assam or of the Union should pay only a certain sum of money amounting to the deficit of the district and enter into an agreement regarding the defence of the district and its external relations. To what extent the Superintendent believed that the Lushais could actually administer their own affairs efficiently in every matter other than defence is a matter of some doubt because in answer to a question whether he thought that the whole administration could be managed by them, he replied "I will not guarantee that it could be done". (See p. — Vol. II Evidence). In answer to a further question he gave it as his opinion that it would not be very long before the district could manage its own affairs and that the length of the period would depend upon whether there was interference from outside by bodies that are too powerful or not. The general impressions gathered by us during our discussions with representatives of various interests in the district was that, with the exception of a few people who are under the influence of the Superintendent, the attitude of the rest was reasonable and it would not be long before disruptive ideas prevailing now completely disappear.

The main emphasis in the demands of the Lushais was laid on the protection of the land, the prevention of exploitation by outsiders and the continuance of their local customs and language.

The district has a revenue of about 2 lakhs and an expenditure amounting to about six lakhs. A high school has recently been started. The Assam Rifles are stationed at Aijal and Lungleh.

6. **THE NORTH CACHAR HILLS SUB-DIVISION—**

This area is a sub-division of the Cachar district whose head quarters is Silchar. It is an area of 1,888 square miles inhabited by 37,361 people of which 31,529 were tribals, the remainder being accounted for by the various railway and other colonies of outsiders. The main feature of this sub-division is that it contains a number of different tribes

†There were incidents earlier leading to the seizure of the Mizo Union's funds by the Superintendents.

namely the Cachari, the Naga, the Kuki and Mikir; a small number of Synteng or Khasi also inhabit the area. The general characteristic is that the tribes named above, with the exception of one or two villages of Naga inhabited by a few Kuki, live in areas of their own and there is no intermingling of population of the different tribes in the villages. The Zemi Naga are however not in a compact block and live in three different portions with Kuki or Cachari in the intervening portion. The Mikir form a pocket to the north-west of the area and the Cachari roughly inhabit the central and south-west portions. The Cachari are the most numerous of the tribes with a population of about 16,000; the Kuki are about 7,000 and the Zemi about 6,000. Relations between the Kuki and the Naga are said to be unsatisfactory though for the time being relations appear to be good. It may be mentioned here that the Zemi have still unpleasant memories of bad treatment by the Angami of the Naga Hills District and there is not much love lost between them though they showed themselves responsive to instructions given by certain Angami officials from Kohima.

There is little literacy in this area and cultivation is by the primitive method of *jhuming.* Unlike the Angami areas in the Naga Hills District, the hill sides here are much steeper and, apart from rainfall, there is no scope for irrigation. Then again, unlike the Angami, the Zemi live in small hamlets and it is not an easy matter to find adequate labour for the introduction of terracing and wet cultivation. A certain number of orange gardens have been planted and potatoes have been introduced into the district. There is little doubt that with the encouragement of education, for which there is a demand the tribes can be brought up to the level of the others; but at present while they are quite capable of understanding the broad outlines of the democratic mechanism and can take part in elections, it is unlikely that they will be able to manage a body like a local board without official aid. The main difficulty in this portion is however that caused by the existence of different tribes who have little feeling of solidarity among themselves. Quite recently a sort of tribal council to bring, together the different tribes with a view to educating them in local self-government was undertaken by the Sub-Divisional Officer, but the Mikir, influenced as they were by people from the Mikir Hills who wanted an amalgamation of the Mikir area with the Mikir Hills portion, would not co-operate in the joint council. Then there is the question of choosing a common representative. The Cachari being the most numerous have some advantage and the area is obviously too small for the representation of more than one in the provincial legislature. It is likely however that there will be a sufficient combination for the purpose of electing a common representative. Since this area cannot share a representative with plains areas, the population of 37,000 will have to be provided with a representative of their own. If however a local self-governing body is formed in this district it is clear that there will have to be some kind of regional arrangement by which the different tribes have their own separate councils which will then come together in the form of a council for the whole sub-division.

Like most other hill districts this area is also a deficit area. The same feeling which exists in other areas about safeguarding land and protection of the land from occupation by outsiders as well as excluding them also from other activities which may lead to exploitation prevails here. One feature of this area is that among the different tribes it is Hindustani which is more of common language than Assamese.

7. **KHASI AND JAINTIA HILLS—**

This partially excluded area consists of the Jaintia Hills formerly forming part of the Kingdom of the old Jaintia Kings and now forming the Jowai Sub-division, and some 176 villages in the Sadar Sub-division. The Khasi and Jaintia Hills as a whole consists of a large territory between

the Garo Hills on the west and the North Cachar Hills and the Mikir Hills on the east. The Khasi States which consist of 1,509 villages cover the western portion of the Hills and the British villages are interlaced with them. The people of the Jowai Sub-division are known as Synteng or Pnar and speak a dialect but with the exception of a small number of Mikir on the northern slopes of the Hills, the whole population of these Hills may be regarded as uniform. Unlike their neighbours who speak Tibeto-Burman tongues the Khasi form an island of the MonKhmer linguistic family.

The Khasi States, which are about 25 in number, are some of the smallest in India. The largest States are Khyriem, Mylliem and Nongkhlao and the smallest is Nonglewai. The system of inheritance of Chief ship is described as follows:—

"The Chiefs of these little States are generally taken from the same family inheritance going through the female. A uterine brother usually has the first claim and failing him a sister's son. The appointment is however subject to the approval of a small electoral body, and the heir-apparent is occasionally passed over, if for any reason, mental, physical or moral, he is unfit for the position. The electors are generally the myntries or lyngdohs, the representatives of the clans which go to form the State." In Langrin, the appointment is by popular election. In some of the States, if the Myntries are not unanimous in their choice, a popular election is held. The Chiefs are known as Siem in most States; but in some they are called Sardar, Lyngdoh in three of them and Wahadadar in one. The functions of the chiefs are largely magisterial and in the discharge of their duties they are assisted by their Myntries. The relations between them and the Government of India are based upon sanads issued to them. For specimen of these sanads Volume XII of Aitchison's Treaties Engagements and Sanads may be referred to. Under the terms of the sanad, the chiefs are placed completely under the control of the Deputy Commissioner and the Government of India and waste lands as well as minerals are ceded to the Government on condition that half the revenue is made over to the Siems. Their criminal and civil authority are also limited. The sanads do not mention the right to levy excise on liquor and drugs and presumably the Siems have that right. Though the States are not in the partially excluded areas, the main interest attaching to them is the fact that there is an understandable feeling among the people of the States that there should be a federation between the States and the British portions so that all the Khasi people are brought under a common administration. The position is that in the British areas, though there is now the franchise and a member is sent to the provincial legislature, there is no statutory local body for local self-government. The States, on the other hand, enjoy certain rights as stated above, and the problem is to bridge the gap.

The Khasi and Jaintia Hills have the advantage of the provincial head quarters Shilling, being situated among them. Literacy among the Khasi amounts to about 11 per cent with a male literacy of 19 per cent. The district is already enfranchised and the special features which it is desirable to bear in mind is the matriarchal system prevalent there, the democratic village systems and other special customs and traditions. Cultivation in the Khasi and Jaintia Hills may be regarded as comparatively advanced. There is a good deal of wet cultivation and the culture of oranges and potatoes is common. The Khasi have also taken to non-agricultural professions much more than other hill people.

8. **THE GARO HILLS—**

Which is the butt-end of the range of hills which constitute the water shed for the Brahmaputra and the Surma Valleys. The Garo who inhabit these hills are people of Tibeto-Burman origin and are similar to the Cachari.

The area of the district is 3,152 square miles and it is inhabited by a population of 233,569 of which 198,474 or nearly 85 per cent, are tribals, mainly Garo. The Garo inhabit not only the district which bears their name but there are villages inhabited by them in Kamrup and Goalpara also and portions of the Mymensingh district of Bengal joining the Garo Hills is inhabited by thousands of Garo.

The Garo are a people with a matriarchal system like the Khasi. The tribal system of the Garo is highly democratic and the whole village with the Nokma as the head or chairman takes part in the council if any matter is in dispute. The district as a whole is pretty backward with only about five literates in a hundred and lacking in communications. Christian missions have been active and there has been a certain amount of conversion but on the whole the Garo even while being able to produce a fair number of intelligent and literate people have yet to come up to the degree of the Khasi or the Lushai. Franchise at present is restricted to the Nokma but is unlikely that there will be any great difficulty in working a franchise system based on adult franchise than in most other areas.

In the Garo Hills also the sole occupation is agriculture and though garden crops are grown round the huts sometimes, the method is largely that of *jhuming.* The people weave their own clothes but there is no important cottage industry. The area is however much more in contact with the plains on either side of it than areas like the Lushai Hills or the Naga Hills.

The Garo are keenly desirous of uniting all the villages inhabited by Garo whether in the plains of Assam or in the Mymensingh district of Bengal under a common administration. The Bengal district of Mymensingh seems to be the home of about 48,000 Garo most of whom are on the fringe of the Garo Hills, and the question of rectification of the boundary to include this area in the Garo Hills district of Assam definitely deserves consideration. A similar examination is necessary in respect of other Garo villages in the Kamrup and Goalpara districts of Assam.

9. **THE MIKIR HILLS —**

The partially excluded area of the Mikir Hills with an area of about 4,400 square miles and a population of about 150,000 persons is split up between two districts namely Nowgong and Sibsagar. The Mikir Hills form an area rather irregular in shape into which there projects an enclave of the Assam Valley. The western extremity of the partially excluded area actually reaches a point in the Khasi Hills and eastwards, it extends to a point not far from Dimapur while to the north it approaches Golaghat. It is clear that the irregular shape of this area makes the administration from centres outside the area rather inconvenient which apparently is the reason why the district has had to be split up between two plains districts. Being a rather sparsely populated* area with rather less than 50 persons to the square mile and containing no communications other than the railway passing through it, it has apparently not been considered suitable for treatment as a separate district. The Provincial Government has at present under consideration a proposal for the making of the whole of the Mikir Hills area into a separate sub-division, perhaps on the analogy of the North Cachar Hills sub-division. Divided between two districts as it is and consisting of inhospitable territory in which jhuming is the only method of cultivation practised while malaria takes its toll, it has been sadly neglected in many ways and special steps are necessary for its development. Very obviously the present state of affairs where it is divided between two districts cannot continue if the area is to be developed and it should be made either a district or a sub-

* It may be noted however that the Lushai Hills are also sparsely populated and there is no railway running through it.

division with its headquarters somewhere in the middle of the bend so that it is accessible from both extremities. The area includes certain mouzs Barpathar and Sarupathar inhabited very largely by non-tribals which even at the time of the constitution of the partially excluded areas were considered doubtful areas for exclusion, and the Provincial Government have since taken a decision that the areas should be added to regularly administered portions as soon as possible.

The Mikir are probably the most backward of all the tribes of the Assam Hills though this backwardness is probably not their own fault. There are pockets of Mikir in the North Cachar and the Khasi Hills. Like the Garo and Khasi the Mikir desire the consolidation of their own tribesmen under a single administration. Unlike the Lushai or the Khasi Hills, Christianity has made little progress here.

While the special customs of the Mikir, their addiction to jhuming cultivation etc. necessitate that an arrangement must be made by which they are able to maintain their own system, the Mikir Hills at present find representation in the provincial legislature although through the restricted franchise of the headman, and opinion generally is that there is no objection to the extension of adult franchise in the area. The sparse population may give rise to certain practical difficulties in organising elections there but it would appear that these are not insurmountable.

The Mikir Hills are inhabited to some extent by Cachari (about 2,000) Rengma Naga and a few Kuki, but on the whole, the population may be regarded as uniform.

In view of the comparatively backward state of the Mikir and the fact that there are no self-governing institutions of a statutory type locally, it is necessary in introducing institutions of this kind to arrange for a period of supervision and guidance in other words, any local council set up in the hills should at first be subject to the control of the local District or Sub-divisional officer.

G. N. BARDOLOI
(Chairman),
J. J. M. NICHOLS-ROY,
RUP NATH BRAHMA.
A. V. THAKKAR.

APPENDIX C

[Annexure VIII]

SUMMARY OF RECOMMENDATIONS OF THE ASSAM SUB-COMMITTEE

District Councils should be set up in the Hill Districts (see Section *B of Appendix A) with powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. This is subject to the proviso that no payment would be required for the occupation of vacant land by the Provincial Government for public purposes and private land required for public purposes by the Provincial Government will be acquired for it on payment of compensation [Para. *9 Section C (1) Appendix A].

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* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

2. Reserved forest will be managed by the Provincial Government. In questions of actual management including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the Hill people should be taken into account (Para *10).

3. On account of its disastrous effects upon the forest, rainfall and other climatic features, *jhuming* should be discouraged and stopped wherever possible but the initiative for this should come from the tribes themselves and the control of *jhuming* should be left to the local Councils [Para *11 and Section C. of Appendix A].

4. All social law and custom is left to be controlled or regulated by the tribes [Para *12 and Section C (2) of Appendix A]. All criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and the Code of Criminal Procedure will not apply to such cases. As regards the serious offences punishable with imprisonment of five years or more they should be tried henceforth regularly under the Criminal Procedure Code. To try such cases, powers should be conferred by the Provincial Government wherever suitable upon tribal councils or courts set up by the district councils themselves.

All ordinary civil suits should be disposed of by tribal courts and local councils may have full powers to deal with them including appeal and revision.

Where non-tribals are involved, civil or criminal cases should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing circuit magistrates or judges [Para *12 Sections D & F of Appendix A].

5. The District Councils should have powers of management over primary schools, dispensaries and other institutions which normally come under the scope of local self-governing institutions in the plains. They should have full control over primary education. As regards secondary school education, there should be some integration with the general system of the province and it is left open to the Provincial Government to entrust local councils with responsibility for secondary schools wherever they find this suitable [Para *13 and Section E of Appendix A].

For the Mikir and North Cachar Hills the District or Sub-Divisional Officer, as the case may be, should be ex-officio President of the local council with powers, subject to the control of the Government of Assam, to modify or annual resolutions or decisions of the local councils and to issue such instructions as may be necessary [Para. *13 and Section B (5) of Appendix A].

6. Certain taxes and financial powers should be allocated to the councils. They should have all the powers which local bodies in regulation districts enjoy and in addition they should have powers to impose house tax or poll tax, land revenue and levies arising out of the powers of management of village forest [Section *H of Appendix A and Para. 14 (a)].

Statutory provision for a fixed proportion of provincial funds to be spent on the hill districts is not considered practicable. A separate financial statement for each hill district showing the revenue derived from the District and the expenditure proposed on it is recommended. The framing of a suitable programme of development should be enjoyed either by statute or by Instrument of Instructions [Section *M of Appendix A and Para. 14 (b)].

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*References to paras., sections and appendices are to paras., sections and appendices in the original reports.

It is quite clear that the urgent requirements of the Hill districts by way of expenditure on development schemes are beyond the resources of the Provincial Government. The development of the hill-districts should be as much the concern of the Federal Government as the Provincial Government. Financial assistance should be provided by the Federation to meet the deficit in the ordinary administration on the basis of the average deficit during the past three years and the cost of development schemes should also be borne by the Central Exchequer [Section *N of appendix A and Para. 14 (c)].

The claim of the hill district councils for assistance from general provincial revenues to the extent that they are unable to raise the necessary finances within their own powers is recognised [Para. 14 (d)].

7. If local councils decide by a majority of three-fourths of their members to licence moneylenders or traders they should have powers to require moneylenders and professional dealers from outside to take out licences [Para. *15 and Section J of Appendix A].

8. The management of mineral resources should be centralised in the hands of the Provincial Government but the right of the district councils to a fair share of the revenues is recognised. No licence or lease shall be given by the Provincial Government except in consultation with the Local Council. If there is no agreement between the Provincial Government and the district Council regarding the share of the revenue, the Governor will decide the matter in his discretion [Para. *16 and Section I of Appendix A].

9. Provincial legislation which deals with the subjects in which the hill councils have legislative powers will not apply to the hill districts. Legislation prohibiting the consumption of non-distilled liquors like Zu will also not apply; the district council may however apply the legislation [Para. *17 and Section L of Appendix A].

10. It is necessary to provide for the creation of Regional councils for the different tribes inhabiting an autonomous district if they so desire. Regional councils have powers limited to their customary law and the management of lands and villages and courts. Regional Councils may delegate their powers to the district councils [Para. *18 and Section B (4) of Appendix A].

11. The Governor is empowered to set aside any act or resolution of the council if the safety of the country is prejudiced and to take such action as may be necessary including dissolution of the local councils subject to the approval of the legislature. The Governor is also given powers to dissolve the council if gross mismanagement is reported by a commission [Para. *19 and Sections Q and R of Appendix A].

12. The Central Government should continue to administer the Frontier Tracts and Tribal Area with the Government of Assam as its agent until administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over by the Provincial Government with the approval of the Federal Government [Section *P of Appendix A and Para. 20 (a)].

The pace of extending administration should be greatly accelerated and separate officers appointed for the Lohit Valley, the Siang Valley and the Naga Tribal Area [Para. *20(a)].

The Lakhimpur Frontier Tract should be attached to the regular administration of the district. The case of the portion of the Lakhimpur Frontier Tract recently included in the Tirap Frontier Tract should be examined by the Provincial Government with a view to a decision whether it could immediately be brought under provincial administration. A similar examination of the

*References to paras., sections and appendices are to paras., sections and appendices in the original reports.

position in the plains portions of the Sadiya Frontier Tract is recommended. The portion of the Balipara Frontier Tract around Charduar should also be subject to a similar examination [Para. *20 (b)].

Posa payment should be continued [Para. *20 (c)].

13. The excluded areas other than the Frontier Tracts should be enfranchised immediately and restrictions on the franchise in the Garo and Mikir Hills should be removed and adult franchise introduced [Para. *21 (a) and Section B (1) of Appendix A].

Weightage is not considered necessary but the hill districts should be represented in the provincial legislature in proportion not less than what is due on their population even if this involves a certain weightage in rounding off. The total number of representatives for the Hills thus arrived at [See para. 21 (b)] should not be taken into account in determining the number of representatives to the provincial legislature from the rest of Assam [Para. 21 (b) and Section K of Appendix A].

The total population of the hill-districts instifies a seat for the hill tribes in the Federal Legislature on the scale proposed in Section *13 (c) of the Draft Union Constitution [Para. *21 (c)].

Joint electorate is recommended but constituencies are confined to the autonomous districts. Reservation of seats, in view of this restriction, is not necessary [Para. *21 (d) and Section K (3) of Appendix A].

Non-tribals should not be eligible for election from hill constituencies except in the constituency which includes the Municipality and Cantonment of Shillong [Para.*21 (e) and Section K (8) of Appendix A].

14. Representation for the hills in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the instrument of Instructions or corresponding provision [Para. *22—See also Section O (3) of Appendix A].

15. Non-tribal officials should not be barred from serving in the hills but they should be selected with care if posted to the hills. The appointment of a due proportion of hill people in the services should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government [Para. *23].

16. A Commission may be appointed at any time or permanently to enable the Government to watch the progress of development plans or to examine any particular aspects of the administration [Para. *24 and Section O (i) of Appendix A].

17. Plains tribals number 1.6 million. Their case for special representation and safeguards should be considered by the Minorities Sub-Committee [Para. *25].

18. The question of altering boundaries so as to bring the people of the same tribe under a common administration should be considered by the Provincial Government. The Barpathar and Sarupathar Mouzas included in the Mikir Hills should be included in the regularly administered areas henceforth [Para. *26].

19. Non-tribal residents may be provided with representation in the local councils if they are sufficiently numerous. For this purpose non-tribal constituencies may be formed if justified and if the population is not below 500 [Para. *27 and Section B (2) of Appendix A].

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*References to paras., sections and appendices are to paras., sections and appendices in the original reports.

20. Provincial councils should be set up by the Governor of Assam after consulting such local organisations as exist. These provisional councils which will be for one year will have powers to frame their own constitution and rules for the future [Para. *29 and Transitional Provisions of Appendix A also].

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* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

APPENDIX D

[Annexure I]

CONSTITUENT ASSEMBLY OF INDIA

EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE [VOLUME I (REPORT)]

Sub-Committee

1. Shri A. V. Thakkar—*Chairman.*

Members :

2. Shri Jaipal Singh.
3. Shri Devendra Nath Samanta.
4. Shri Phul Bhanu Shah.
5. The Honourable Shri Jagjivan Ram.
6. The Honourable Dr. Profulla Chandra Ghosh.
7. Shri Raj Krushna Bose.

Co-opted Members:

8. Shri Khetramani Panda (Phulbani Area).
9. Shri Sadasiv Tripathi (Orissa P. E. Areas).
10. Shri Kodanda Ramiah (Madras P. E. Areas).
11. Shri Sneha Kumar Chakma (Chittagong Hill Tracts).
12. Shri Damber Singh Gurung (Darjeeling District).

Secretary:

13. Mr. R. K. Ramadhyani, I.C.S.

[Annexure II]

APPENDIX D

From

THE CHAIRMAN, EXCLUDED & PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE

To

THE CHAIRMAN, ADVISORY COMMITTEE ON FUNDAMENTAL RIGHTS, etc.

SIR,

I have the honour to submit herewith the Reports of my Sub-Committee for the Excluded and Partially Excluded Areas of Provinces other than Assam. We have visited the Provinces of Madras, Bombay, Bengal, Central Provinces and Orissa, and in regard to these Provinces our recommendations may be taken as final. We have yet to visit Bihar and the United Provinces and to examine certain witnesses from the Punjab. In respect of these Provinces, the Report may kindly be treated as provisional. Our final Report is expected to be ready by the end of September.

I have the honour to be,
SIR,
Your most obedient servant,
A. V. THAKKAR,
Chairman,
Excluded & Partially Excluded Areas
(other than Assam) Sub-Committee.

NEW DELHI;
The 18*th August* 1947.

[Annexure III]

APPENDIX D

INTERIM REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE OF THE ADVISORY COMMITTEE (CONSTITUENT ASSEMBLY OF INDIA)

1. **INTRODUCTORY—**

Appendix A* shows the excluded and partially excluded areas for which we are required to submit a scheme of administration. Appendix B* contains certain statistical information and the thirteenth schedule to the Government of India (Provincial Legislative Assemblies) Order, 1936, which shows the different tribes classed as backward, and among these tribes are to be found the inhabitants of the excluded and partially excluded areas. In determining the areas to be classified as excluded or partially excluded, the Secretary of State for India issued instructions that exclusion must be based upon strict necessity and must be as limited as possible in scope constantly with the needs of the aboriginal population. As regards partial exclusion, he considered that *prima facie* any areas containing a preponderance of aborigines or very backward people which was of sufficient size to make possible the application to it of special legislation and which was susceptible, without inconvenience, of special administrative treatment should be partially excluded. The Government of India in making recommendations for partial exclusion kept in view the possibility of obtaining convenient blocks of territory with readily recognisable boundaries susceptible of special administrative treatment without inconvenience. Thus, the excluded and partially excluded areas are well defined are as populated either predominantly or to a considerable extent by aboriginals. The excluded and partially excluded areas, however, do not by any means cover the entire population of tribal origin, and in many cases represent only a comparatively small proportion of the aboriginal population, the rest of them being scattered over non-excluded areas. As an example, in the C.P., out of 299 millions of tribals of all religions, only 8.3 lakhs live in the partially excluded areas. With the exception of the Mandla District, which is a partially excluded area and contains 60.5 per cent of tribals, Betul and Chhindwara districts which include partially excluded areas and contain 38.4 and 38.3 respectively of tribals, the tribals are scattered all over the province and comprise almost a fifth of the population in some districts. This kind of intermingling is prominently noticeable in Bombay and Bengal and to some extent in other provinces also. In Bengal notably, the tribal population of the excluded areas is but a small fraction of the total tribal population of the province. A common feature of the partially excluded areas is that they are generally located in the out of the way and hilly tracts, and it is in these areas that concentrations of aboriginal population may be found. In the non-excluded areas although small blocks of them can be distinguished, notably in the Madras Presidency, elsewhere, they are interspersed with the rest of the population and are sometimes hardly distinguishable from the general population. Although our terms of reference strictly require us to report on the excluded areas, the total population of tribals in the non-excluded portions of British India not including Assam comes to about 5.5 millions, and we consider therefore that our recommendations should not altogether leave out of consideration such a large population who in many respects are in a very backward condition. We have felt it therefore necessary to recommend that the

* Reference to Appendix is to Appendix in the original report.

whole tribal population should be treated as a minority community for the welfare of whom certain special measures are necessary. Bearing this in mind, we proceed to discuss the general features of the tribal population in the different provinces.

2. **THE EXCLUDED AREAS—**

The excluded areas are few in number and consist of the islands of the Laccadive group on the West Coast of Madras, the Chittagong Hill Tracts in Bengal and the Waziris of Spiti and Lahoul in the Punjab. Of these tracts, the West Coast Islands and the Waziris of the Punjab are isolated from the rest of the province on account of their geographical position and the impossibility of communicating with them during a part of the year. The West Coast islands are cut off from the mainland for several months during the monsoon. Similarly, the Punjab Waziris are isolated during the winter when snow blocks the passes. Inaccessibility of these areas is largely responsible for their exclusion as well as for the backward condition of their inhabitants. The position in these areas is briefly given below:—

(a) **Madras.**—The islands may be considered to fall in three divisions, the Amindivi islands opposite the South Canara coast, the Laccadives attached to Malabar and Minicoy, the southernmost of them, also attached to Malabar. The total area is about 10 square miles and the population, all Muslim, 18,355. The Minicoy islanders are of Sinhalese origin while the inhabitants of the others are akin to the Mapillah of Malabar. The economy of the islands is based on the coconut palm and the produce (coir production is a whole family job) is exchanged for rice and other necessities. The administration is carried on largely by customary laws and special regulations. An amin, or monegar (Amindivi) with powers to try petty criminal and civil cases is the official immediately in contact with the islanders and the amin is in fact selected from the islanders. In the Minicoy island, literacy is said to be cent per cent; in the others, it is negligible. There is no appreciable intercourse between these lands of the three groups and their geographical position necessitates separate treatment. While they are located in a strategic position, we understand that the islands are not suitable for naval stations as they are coral islands and there is difficulty in getting fresh water. Hitherto, they have been administered practically in the manner in which relations were started with them in the days of John Company. Rs. 2 lakhs are spent, partly by way of doles including gifts of combs and mirrors, on the visits of the Collector or other official to the islands, but no attempt seems to have been made to increase intercourse between these lands and the mainland.

(b) **Punjab.**—The excluded area consists of Spiti and Lahoul with an area of 2,931 and 1,764 square miles respectively. Spiti has a population of only 3,700 and Lahoul about 9,000 (1941). The people are of Tibetan origin and Buddhists. The main difficulty about the areas is the difficulty of communication as the passes leading to them are blocked by snow in the winter.

The Provincial Government have now come to the conclusion that Lahoul need no longer be considered as excluded area and should be brought under the general system of administration.

The cultivation of *kuth* has brought some economic prosperity to this area and many Lahoulis have taken to trade also. Spiti is still economically in a backward condition and the schools there are not flourishing. Spiti has still very little of the contact with the plains which Lahoul has. Several agrarian laws have not been applied to Spiti particularly though the most important enactments are now in force without modification.

(c) **Bengal.**—The Chittagong Hill Tracts on the other hand, are not inhabited by a population of Burmese and tribal extraction. They cover an area of about 5,000 square miles and contain a total population of 247,053, mostly Buddhists. In 1941, there were 9,395 literates including 622 females among the tribes out of a population of 233,392. There are 154 schools and a High School at Rangamati. There is a good deal of contact with the plains people in the western portion of the tract, but the eastern portion towards the Lushai Hills and the Burmese border is more primitive.

Jhuming cultivation is practised almost universally and it would appear that there are considerable difficulties in the way of terraced or wet cultivation on account of the friable nature of the hill sides and the difficulty of irrigation. Some settled cultivation also exists and it may happen that a family does both kinds of cultivation. Both plough rent and *jhum* tax are levied. Pressure on the land is increasing and the tribes are greatly apprehensive of encroachment by outsiders.

Weaving and tapestry is a common household occupation but cannot be said to be a cottage industry though it has potentialities in that direction. The district is deficit to the extent of about Rs. 2 lakhs.

The special feature of the Chittagong Hill Tracts are the Chiefs, the Chakma Raja, the Bohmong and Mong Raja. The tract is divided into three circles representing the jurisdiction of the Chief. The Chakma circle is the largest and is 2,409 square miles; the Bohmong and Mong circles are 1,935 and 704 square miles respectively. The Chief have certain magisterial and appellate powers and out of the *jhum* tax of Rs. 6 per family. Rs. 2-8-0 goes to the Chief, Rs. 2-4-0 to the headman and Rs. 1-4-0 to the Government. On the ground that they are really tributary powers, the Chiefs are claiming the status of Indian States and desire that three States corresponding to the circles should be set up. It is claimed that before the *jhum* tax was imposed there was a capitation or family tax and that the right to levy this tax was a symbol of sovereignty. In 1928, a report on the position of the chiefs was submitted by Mr. Mills who recommended that the chiefs should be relieved of the collection of *jhum* tax and should also be relieved of their magisterial duties, the powers of Honorary Magistrates being conferred on them if they were proved fit. His idea was that "they were the leaders of their people and in that lay their value" and they should therefore be consulted in all important matters of the administration. Their position and future is a matter of some importance and needs careful examination by the Provincial Government. We do not feel that we can express a carefully considered opinion.

Now that Bengal is to be partitioned, the future administration of the Hill Tracts appears to lie with Assam. The Lushai Hills form in part the hinterland of this district and though communications to the east are not easy, they are not more difficult than with Chittagong. The Karnafuli provides a waterway to Demagiri which is connected with Lungleh in the Lushai Hills. The *Chakma, Magh* and *Mro* of these Hills have probably their tribal origin in common with the Lushais and in any case the province of Assam is the home of many different tribes. It is obvious that the Hill Tracts should not go to East Bengal in view of its predominantly non-Muslim population. The people themselves are strongly averse to inclusion in Bengal. They desired that the area should be set up as an autonomous district.

3. **PARTIALLY EXCLUDED AREAS —**

The main feature of the Partially Excluded Areas is that they are not altogether excluded from the scope of the Provincial Ministries like the excluded

areas nor is the expenditure on them outside the scope of the legislature. In fact the administration of the areas notably of the C. P. and Bombay has not been appreciably different from the rest of the province and the Provincial Governments were in greater or less degree opposed to their exclusion. It is in the Agency Tracts of Madras and Orissa and in the Santal Parganas that a different system prevails. A brief account of the areas of each province follows:—

(a) **Madras.**—The partially excluded areas consist of the East Godavari Agency, the Polavaram taluq of West Godavari Agency. The total area is 6,792 square miles and the total population 493,006 of which about 278,000 are tribal, and 54,000 are classed as backward making a total percentage of 67.6. The tribes inhabiting these tracts are Koya, Koya Dora, Hill Reddy, Dombo, Kondh and others. The tribes are pretty backward on the whole and do podu (shifting cultivation) largely. Except manual labour they have no non-agricultural occupations worth mentioning. There are special agency rules and save for certain sections the Civil Procedure Code does not apply. Crime is scarce and the aboriginals are simple and truthful. The mechanism of justice therefore needs to be a simple one.

There are no local self-governing bodies and tribal panchayats do not seem to be fit for work other than the decision of petty disputes. The toddy palm plays a large part in the life of aboriginals. They have suffered in the past through exploitation by moneylenders and landlords and incidents like the Rampa rebellion have occurred in the areas. Licensing of moneylenders, as agreed by the Collector of West Godavari, is probably a definite need of these parts in addition to the prevention of acquisition of land by non-aborigines.

Yaws and malaria are very common in these parts.

(b) **Bombay.**—The partially excluded areas which are to be found in the districts of West Khandesh, East Khandesh, Nasik, Thana, Broach and Panch Mahals cover an area of 6,697 square miles and contain a population of 1,125,471 of which 663,628 or 58.9 per cent are tribals. The tribes are largely Bhil, Varli, Kokna, Thakur and Katkari. In 1935, the Government of Bombay were not in favour of exclusion of any area except the Mewasi Chiefs Estates and the Akrani Mahal in the West Khandesh District on the ground that the administration of these areas was all along carried on in the same manner as the other tracts and that there were local self-governing institutions in the areas. The Akrani Mahal in the Satpura Hills is an almost purely Bhil area and probably the one with the least contact with the plains.

In 1937, the Government of Bombay appointed Mr. D. Symington to conduct a special enquiry into the conditions prevailing in the aboriginal areas. Mr. Symington pointed out that the local boards were largely or even exclusively run by non-Bhil elected members and opined that it was not a mere question of providing seats for the hill tribes but that these people were not sufficiently educated and advanced either to use their votes sensibly or to produce from among themselves enough representatives capable of looking after their interests intelligently on local boards. "They are not only illiterate but also ignorant of everything outside their daily run. They are contemptuous of education which they regard as a degrading and senseless waste of time. They have more faith in witch-doctors than in pharmacopoeia. They live near the border line of starvation. They are inveterate drunkards. It was not surprising that they take no interest in the local boards elections or local board administration." He also expressed the opinion that the salvation of the aboriginal lay in pro-

tecting him from exploitation by the moneylenders who were gradually depriving him of his land, and stopping the drink habit. Giving evidence before us, he reiterated the view that elections would be completely useless so far as these people were concerned.

Among the Thadvi Bhils (Muslims) there is a Sub-Judge. Among the half dozen graduates from the Bhils there is Mr. Natwadkar, the M.L.A. from West Khandesh and there is a lady from the Panch Mahals. The demand for education is however becoming very keen.

In the Warli areas of the Thana District visited by us practically all the land had been taken up by non-tribals and the tribals were reduced to the condition of landless serfs. The Bombay Government have in fact now found it necessary to pass special legislation to prevent alienation of land. On account of the acquisition of all the land by a few people, the land system in this tract has been virtually transformed from a ryotwari system to a system similar to the malguzari system of the Central Provinces.

(c) **Central Provinces & Berar.**—The partially excluded areas, of which Mandla District is the largest unit, contain only 833,143 tribals out of a total tribal population of nearly 3 millions. The Gond (including Maria and Pardhan) is the main tribe in the C. P. and the Korku in the Melghat are prominent in Berar. Although backward and adhering largely to their own customs and ways in the areas where they are still most numerous, the tribes have in appreciable degree assimilated the life of the rest of the population and tribal institutions are either weak or practically non-existent. Mostly the tribes have taken to settled cultivation and there is little bewar or dahia in the province. Of handicrafts and cottage industries, however, there is next to nothing and this is the great weakness of the aboriginal economy. The aboriginal is given to drink but opinion in favour of temperance or prohibition seems to be gaining ground.

The partially excluded areas are, with hardly any exception, administered in the same manner as the other districts. The C. P. Land Alienation Act of 1916 is the only notable legislation enacted specially for the protection of the aboriginals and restricts the transfer of agricultural land from aboriginal to non-aboriginal classes. In 1940, when the C. P. Tenancy Act was amended to confer rights of alienation on certain classes of tenants, the application of the amending Act to the partially excluded areas was made subject to certain modifications designed to secure that unscrupulous landlords would not manipulate to their own advantage the complicated provisions of the Act.

A special enquiry into the problems of the aboriginals was ordered by the C. P. Government and a report was submitted by Mr. W. V. Grigson in 1942. Among the points made by Mr. Grigson were the weakness of the tribal representatives in the local boards and the need for provisions to prevent the application of legislation to aboriginal areas except after special consideration. Mr. Grigson was also examined by us as a witness and expressed himself in favour of a system of indirect election for the aboriginals. Opinion of a number of C.P. witnesses was not in favour of reserved representation for the aboriginals in proportion to their population. Some witnesses preferred nomination out of a panel submitted by the District Officers. At present there are three tribal members in the Legislature although only one seat is reserved.

The Provincial Government have now created a special Department and inaugurated a scheme of development of the aboriginal areas in which multipurpose co-operative societies play a prominent part. Opinion in the C.P. (as in

Bombay) was strongly in favour of boarding schools with free meals as the only way of making schooling acceptable to the aboriginals.

(d) **Orissa.**—This province contains a partially excluded area of nearly 20,000 sq. miles, *i.e.,* almost two-thirds of the province is partially excluded. The partially excluded area includes the portions of the Madras Agency Tracts transferred to Orissa, the Khondmals of the former Angul District and the Sambalpur District which was formerly in the C. P. The total tribal population of the province is 1,721,006 of which 1,560,104 are found in the partially excluded areas. The tribes inhabiting this province are among the most backward in the whole of India. The Bonda Porja, Gadaba, Kondh and Savara are among the most important of them. In 1939 the Orissa Government appointed a special committee to make recommendations for the partially excluded areas (Thakkar Committee) which found that some tracts were too backward to administer even local boards. Although they have representatives in the legislature, four of the five reserved seats are filled in by nomination and some of the nominated members have to be non-tribals. The precentage of literacy in the Agency Tracts is about one per cent. A Backward Classes Welfare Department has recently been setup. The Thakkar Committee made a number of important recommendations which could not be given effect to during the war and are now being taken up.

Apart from the Khondmals which are now attached to the Ganjam Agency, the Angul Sub-division which is a partially excluded area has only 13,308 tribals who form 8 per cent of its population. The Thakkar Committee recommended the administration of this area as a regular district and pointed out that the Angul Laws Regulation is no longer suited to the advanced condition of the people. Even in 1935, it was stated by the Orissa Government that the area was so advanced that it should be possible within a few years to place it on a level with the normal Districts (para. 49, Recommendations of Provincial Governments and the Government of India, Indian Reprint).

The District of Sambalpur was made a partially excluded area largely on account of the special system of that district, *viz.,* the district system of revenue and village administration. The district was formerly part of the C. P. and the C. P. Revenue Laws and type of village administration were in force. The aboriginal population of the district is 252,095 and constitutes 19.6 per cent. but most of these tribals seem to have assimilated the customs and culture of the surrounding Hindu population. The administration of the district though differing from the rest of Orissa was not radically different from the administration of the C. P. plains districts until 1921. Three of the Zamindar is of Sambalpur had been declared scheduled districts under the Act of 1874, but with the exception of the Insolvency Act of 1920 all other legislation was applied to the district. The Thakkar Committee recommended (para. 397) that the district should cease to be a partially excluded area and should be treated as a normally administered area. The Committee however considered (para. 402) that some sort of protection was still needed for the aboriginals of that district and recommended certain special measures for the protection of the land of the aboriginals (para. 403). The tribes in this district consist mainly of Gond (102,765), Kondh, Kharia and Savara. They are concentrated largely in the Sadar Sub-division of the district. Literacy among them is not up to the level of the Scheduled Castes of the District and amounts to only about 2 per cent. They however take part in elections and in the Sambalpur Sadar constituency there is are served seat for the backward tribes. This is the only one of the five tribal seats in the province which is filled by election.

The question of representation for the Orissa tribes presents somewhat of a problem. Local officials had serious doubts as to the possibility of finding suit-

able representatives from among them, at any rate in proportion to their population. The Provincial Government have similar hesitations. In their factual memorandum (page. 28*) they have recommended that local bodies should be partly elected and partly nominated. For the Provincial Legislature, "a specific number of seats should be reserved for aboriginal members in general constituencies; but the aboriginal members should be elected to these seats by a system of indirect or group election."

(e) **Bengal.** —The partially excluded areas of Bengal consist of the District of Darjeeling and certain police station areas in the Mymensingh district which border on the Garo Hills of Assam.

The Darjeeling District is shown to contain 141,301 tribes out of a total population of 176,369 in 1941. The tribal population of the district seems to consist largely of labour employed in the tea gardens and some Lepcha and Bhotia. Actually, the latter are only about 20,000 in number. The prominent community in Darjeeling is the Gurkha or Nepalese community which numbers about $2^1/_2$ lakhs. A good many are employed in the tea gardens and the local police force also contains a high proportion of them. The Gurkha are not regarded as a backward tribe and the thirteenth schedule to the Govt. of India (Legislative Assemblies) Order does not include Gurkha. They feel however neglected so far as other ranks of Government service are concerned and in the trade and business of the place, the Marwari has the upper hand. On the other hand, the small community of Lepcha (12,000) finds itself dominated by the Gurkha and one of the complaints is that their land (the Lepcha claim to be the original inhabitants) has been gradually taken away from them by Nepalese immigrants.

The partial exclusion of Darjeeling was recommended by the Govt. of Bengal not because it was considered as a Backward area but because it was felt that safeguards were necessary in the interests of the hill people. The fact that Darjeeling was the summer capital of the Government of Bengal and the existence of European tea-planters may have played some little part. The 1941 census shows that even among the tribals (mostly tea garden coolies) there was 16,450 literates out of a total population of 141,301 and 2,571 of these were women.

The local bodies (Municipality and District Board) are not wholly elected bodies and the Deputy Commissioner is the President of the Municipality. Undoubtedly the land the hill tribes needs to be protected from the maw of money lenders but there is little case otherwise for continuing partial exclusion or special administration.

The Gurkha League desires that there should be an elected Advisory Council in the District so that the interests of the Gurkhas in representation in the services, in the land and industry of the district may be protected. They have also sponsored a movement for union with Assam where there is a strong Gurkha element.

As regards the partially excluded portion of the Mymensingh District, there are about 49,000 Garo in all but according to the census, some of the *thanas* contain very few tribes. The provincial Govt. were opposed to its partial exclusion in 1935. They pointed out that no special measures had been hitherto necessary to protect the tribe and had no indication at any time that the existing administrative system had worked inequitably for them. It would appear that

* Reference to page is to page in the original report.

the partial exclusion of this area was consequential upon the exclusion of the Garo Hills District in Assam. The Garo of this area are keenly desirous of being united with the Garo of Assam under a common administration, and in view of the division of Bengal there is a good case for rectification of the boundary, *i.e.* to include the Garo area in the Garo Hills Districts of Assam. The majority of the population of the partially excluded area (5.94 lakhs) consists however of non-tribals and it will be necessary therefore, to draw a fresh boundary.

(f) **Bihar.**—The Partially Excluded Areas of this province extend over the enormous area of 32,458 sq. miles comprising the whole of Chota Nagpur division and the Santhal Parganas District. The total population of the area is 9,750,846 and nearly 4.5 million of these are tribal people consisting of Santhal, Oraon, Munda, Ho, Bhumij and other lesser tribes of the Kolarian family. Although the general level of literacy and development in this area is lower than that of the non-aboriginal population, the tribes people here are rapidly advancing and quite a number of people in the learned professions may be found among the Munda and Oraon. Local self-governing institutions exist, and there is no question that the area would be able to take part intelligently in the administration of the province. The main feature of this area may be summarized in the words of the Provincial Government in recommending partial exclusion: "The Special Tenancy Laws in Chota Nagpur, the Santhal Parganas, *Sambalpur and *Angul are the bulwark of the backward peoples. The legislatures of the future would have the power to amend, modify or even repeal those laws and the only safeguard against legislative action detrimental to the interests of backward peoples is the power of the Governor to refuse assent. .....The importance of these special Tenancy Laws to the aboriginals cannot be over-stressed. The history of the Santhal Parganas and Chota Nagpur was one of continuous exploitation and dispossession of the aboriginals punctuated by disorder and even rebellion until special and adequate protection was given. In the fringe areas, such as Manbhum, where the non-aboriginals are in a majority, the aboriginal element would probably have been driven from the land long ago but for the protection given by tenancy laws. .....The fate of the aboriginal where he has been unprotected has usually been to lose his land....." In the Santhal Parganas, legislation since 1855 has been mainly by means of special regulations framed by the Governor-General-in-Council. The main function of these regulations was to regulate *inter alia* the agrarian law, the constitution of courts and their procedure, money lending and the village police. Except in the most important cases the jurisdiction of the High Court was excluded and judicial procedure simplified. In the Kolhanpir of the Singhbhum District also, the Civil Procedure Code was replaced by simplified rules but generally speaking, the laws of the rest of the province operate in Chota Nagpur. For a detailed account, the Factual Memorandum of the Provincial Government may be referred to (pages† 97-98, Excluded and Partially Excluded Areas — I). Since 1937, section 92 (2) of the Government of India Act has been made use of to frame some special regulations notably for the Santhal Parganas.

The population of Chota Nagpur and the Santhal Parganas is rather mixed and except in the Ranchi District, the Singhbhum District and the Santhal Parganas, the tribal population are in a minority. In their Factual Memorandum, the Bihar Government have pointed out that a comparison between the figures of 1941 and 1931 census shows that there is room for doubting the accuracy of

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* Now in Orissa.

† References to pages are to pages in the original reports.

the figures of the 1941 census. Recently an agitation has been started for the formation of a separate Chota Nagpur Province on the ground that this land is the land of the aboriginal residents who are distinct from the inhabitants of the plains in many ways. Taken as a whole, the tribals form only 45.6 per cent of the total population of the Partially Excluded Areas and in Chota Nagpur they constitute 44.2 per cent of the population. Only in Ranchi (70 per cent), Singhbhum (58.4 per cent) and Santhal Parganas (50.6 per cent) are they in anything like a majority. The creation of a separate province is a matter outside the scope of our enquiry and we do not find that this is in fact necessary for the satisfactory administration of the tribals.

(g) **United Provinces.**—The partially excluded areas are the Pargana inhabited by the Jaunsari tribes in the north and the portion of the Mirzapur District below the Kaimur Range inhabited by mixed tribes of Chota Nagpur and Central India. The area is 483 sq. miles in the Dehra Dun District and 1,766 sq. miles in the Mirzapur District. The total population of both areas is about 200,000.

The Jaunsar Bawar Pargana forms the watershed between the Jumna and the Tons. The country is hilly and offers little land for cultivation. It appears that most of the cultivable land is held by Brahmins and Rajputs and that the Koltas (Scheduled Caste) are debarred from possession of land according to the village Wazibul-arz and occupy practically the position of serfs. Though the great majority of the people are Hindus, polyandry and special systems of divorce are in vogue since ancient times. Although the area is under the criminal jurisdiction of the High Court a simplified system of criminal, civil and revenue administration is followed and except in Chakrata Cantonment, regular police are not employed. For civil law, the Commissioner, Meerut, acts as a High Court. The Excise and Opium Acts have not been extended to the area and opium cultivation is permitted. There is great illiteracy in the area and the administration will have to be suited to the lift of the inhabitants. In Khat Haripur Bias at the foot of the hills however conditions are different and approximate to those in the plains. The Khat Haripur Bias Tenants Protection Regulation of 1940 has afforded some protection to the tenants. The Provincial Government are of the view that this Khat should be included in the Dehra Dun Tahsil. Though the area is enfranchised and is included in the Dehra Dun rural constituency, it is considered incapable of sending representatives to the legislature.

As regards the Mirzapur District, the excluded area consists of four parganas of which only the Agori and Bijaigarh parganas have a concentration of aboriginals. The population consists of a number of tribes having affinities to the tribes in the neighbouring provinces from which they have come. There is no strong tribal life left among them. Their occupations are said to be those usually followed by the Scheduled Castes and in their religious and social customs they are similar to low-caste Hindus.

The land revenue system of this area is different from the rest of the Province and is based on a plough tax. The non-agricultural classes are gradually acquiring land from the aboriginal. The Tahsildars of the tract who exercise magisterial functions are Munsifs also. Except in relation to suits of succession and

divorce, the court of the Commissioner is the highest court of appeal in civil suits. The area is under the jurisdiction of the District Board of Mirzapur.

The Provincial Government are of the view that there is no justification for this area being treated differently from the rest of the province and that normal administration should be extended to it immediately.

4. **POLITICAL EXPERIENCE—**

The people of the excluded areas have no experience of local self-governing institutions of the modern or statutory type and are of course not represented in the legislature. The management of a Local Board is perhaps likely to be a much bigger undertaking for the people of these areas than the mere election of a representative to the legislature and the establishment of such bodies needs perhaps a period of official guidance and control, particularly in areas like the Madras islands. The partially excluded areas on the other hand are all included in electoral constituencies of the provincial legislatures and with the exception of the Agency tracts of Madras and Orissa,* the Santhal Parganas and Jaunsar Bawar, are covered by local boards also. There are certain reserved constituencies, *viz.*, Bihar 7, Orissa 5, Madras 1, Bombay 1 and C. P. 1. In Orissa, four of the five members are selected by nomination. Unlike Assam, no reservation of seats had been made for tribals of the plains or non-excluded areas and these vote along with general Voters. In Bombay, C. P. and Chota Nagpur, the tribals though reported to be apathetic and showed aside by non-tribals, have known, at least nominally, such bodies as local boards. Nevertheless it is likely to take some time before there is sufficient interest in these bodies and probably interest in local self-government will have to be built up from the village stage. Although as shown by Mr. Grigson in his report, the tribals cast their vote as copiously as others, they have yet to learn to utilise its powers to their own advantage.

5. **EFFECTS OF EXCLUSION—**

Although exclusion or partial exclusion has been in force for a number of years now, the benefits which the areas have derived from it are not particularly noticeable. In the case of the excluded areas, the sole responsibility for the administration has laid upon the Governor and the revenues earmarked for these areas have been outside the vote of the provincial legislature. No definite programme for the development of the excluded areas with a view to removing the disability of exclusion has been followed. The introduction of *kuth* cultivation in Lahaul has brought it some economic prosperity but the West Coast islands are probably no better off than they were ten or twelve years ago, and in the Chittagong Hill Tracts no great impetus to enlightenment is perceptible. On the other hand, in the partially excluded areas also little improvement is as yet visible although in Bombay an inquiry into the conditions of the aboriginals was started as early as 1937. A Backward Class Department and Board have also been functioning in Bombay. Other provinces have since taken the cue and welfare work now seems to be forging ahead but it is perhaps the general interests in the backward classes which is responsible rather than the system of partial exclusion as such. The remarks of the Orissa Government are of interest: "The system of partial exclusion has also been a most unsatisfactory constitutional device. In matters of administration of the partially excluded areas, the Ministers tender advice to the Governor, with whom the ultimate responsibility for the good Government of these areas rests. He may accept or reject

* In the Koraput District there is a District Board with the Collector as President.

such advice. The system suffers from a fundamental defect; the responsibility is shared between the Governor, and the Ministry answerable to the people of this country or their elected representatives." No less responsible is perhaps the fact that the representatives of the partially excluded areas have not been capable of bringing sufficient pressure and influence to bear on the Ministry. Further, some of the partially excluded areas which constitute small pockets in large districts and constituencies could apparently be lost sight of and their interests subordinated to those of the larger areas in which they were contained. Some of the C. P. excluded areas situated in the Chhindwara and Bilaspur districts may be particularly noticed in this connection. They constitute comparatively small islands of partial exclusion which have little voice in a large constituency. The greatest weakness of the scheme of partial exclusion is perhaps the fact that it left areas weakly or only nominally represented in the legislature without any special financial provisions. Whatever the reasons may be, the conclusion to be drawn from the state of affairs noticed by us is that partial exclusion or exclusion has been of very little practical value. There has been neither educational nor economic development on any appreciable scale. The object of special administration has thus not been achieved, and it is clear that if the hill tribes are to be brought up to the level of the rest of the population the strongest measures are now necessary.

6. **ATTITUDE OF THE GENERAL PUBLIC**—

One thing which we noticed in the course of our visits to the different Provinces was a considerable awakening of the public conscience in the matter of the welfare of the tribal people. The inquiries instituted in some of the Provinces have doubtless contributed to this quickening. Non-official organisations are beginning to take interest in the welfare of the tribes and the work of the Servants of India Society stands out prominently among these. The recent rising of the Warlis in Bombay Presidency has drawn attention in a rather forcible way perhaps, to their problems. Whatever the reasons, is seems now clear that there is a general tendency to take up the question of development of the tribes people as a serious matter, but whether this by itself is sufficient to ensure the future well-being of the tribes is more than questionable. Most of the Provinces are far from being happily placed in the matter of funds, and the development of areas inhabited by tribes which are situated generally in hilly country is a matter which calls for a good deal of expenditure for which there are many competitors. The emergence of educated people among the tribes is as yet inadequate for the maintenance of interest in their problems.

7. **POTENTIALITIES OF THE TRIBES**—

The views of people of different points of view regarding the future administration of the hill tracts and of the tribes people themselves was found to be remarkably uniform. To begin with, there was hardly anybody who did not believe that the tribals are capable of being brought to the level of that rest of the population by means of education and contact. Wherever facilities for education and contact have been available, the tribes people have showed that their intelligence can be developed and environmental difficulties overcome. It is true that as yet there is a great deal of apathy in certain areas. Mr. Symington's report in particular points out that the Bhils take little interest in the local boards

or in education and their addiction to drink is likely to keep them in their present backward state. In the partially excluded areas of Orissa, we came across tribals who had not been anywhere beyond a few miles of their village or seen a motor car or a railway train. By and large however we found that there is a considerable demand for education and advancement among the tribal peoples and have no doubt that within a short time they can be brought up to a satisfactory level, if development plans are vigorously pursued.

8. **GENERAL CONCLUSIONS—**

To sum up: Both exclusion and partial exclusion have not yielded much tangible result in taking the aboriginal areas towards removal of that condition or towards economic and educational betterment. Representation of partially excluded areas in the legislature and in local bodies has been weak and ineffective and is likely to continue to be so for some time to come. Education shows definite signs of being sought after more and more but the poor economic condition of the aboriginal and the difficulty of finding suitable teachers present problems which must be overcome before illiteracy can be properly tackled. The great need of the aboriginal is protection from expropriation from his agricultural land and virtual serfdom under the money-lender.

There are certain tracts like Sambalpur and Angul in the Orissa province which need no longer be treated differently from the regularly administered districts. On the other hand areas like the Madras and the Orissa Agency tracts still need a simplified type of administration which does not expose them to the complicated machinery of ordinary law courts. Differences in social customs and practices among the tribes also need to be kept in mind.

9. **REPRESENTATION IN LEGISLATURES—**

We have pointed out at the very outset that the tribals who live in non-excluded areas form part of our problem and cannot be left out of account. In considering representation in the Legislatures we would urge that the tribes should be treated as a whole as a minority and not separately. In this regard, we would refer to a certain difference of opinion which exists among the parties interested. In Bombay the view of the Ministers and others dealing with the problem was unreservedly in favour of providing representation for the tribes as a whole by reservation of seats in a joint electorate. In Madras also a similar view found favour. In the Central Provinces, however, different views were expressed not only in respect of the method of election but also about reservation, both by officials and by Ministers. Certain district officials suggested that there should be nomination out of a panel submitted by district officials. Mr. Grigson favoured a scheme of indirect elections by means of group panchayats. The general feeling among these officials was that election was not likely in the present circumstances to produce suitable representatives. Some point was given to this by the reply of Mr. Wadiwa, a Gond pleader, who gave evidence before us, that he could not stand for election on account of the expense involved. The Ministers on the contrary seemed to have no objection to elections but were strongly opposed to reservation of seats in proportion to their population. Mr. Grigson also did not appear to favour reservation though he was of the view that if reservation was made for the scheduled castes there was no justification for not protecting the aboriginal similarly: “But once we start with reservation there is the possibility of it becoming permanent.” The Ministers considered that increased representation would be provided by their scheme of demarcating constituencies without the evil of creating a separatist mentality. “These tahsil areas will be delimited so that particular communities in particular areas

will get an effective voice. Just as particular wards in a municipality return only a particular class or community of persons—some wards in Nagpur Municipality return only Muslim members—an Ahir ward or tahsil will return only an Ahir, a Gond tahsil will return only a Gond and so on. In this way we want to give all the sections of our people thorough and complete representation without whetting their communal appetite." As regards the other tribals who are not found in compact areas, it is asserted that they are generally dispersed in the province and not easily distinguishable from the other people. In Orissa reservation of "a specific number of seats" in general constituencies is recommended but it is considered necessary that aboriginal members should be elected to these seats by a suitable system of indirect or group election. The remarks of the Orissa Government in connection with the system of partial exclusion are relevant: "The inadequacy of representation of the aboriginal people of these areas in the legislature has also contributed to their neglect. They are not vocal nor have they any press for propaganda. They have been represented in the Assembly by five members, four nominated by the Governor and one elected from Sambalpur. As a result of this insufficient representation, the problems of these areas do not receive the attention to which their size and importance entitle them." We have given serious thought to the question and come to the conclusion that the tribals should have reserved seats in a joint electorate based on adult franchise. We do not consider the scheme of the C. P. Government adequate as it provides no safeguards for the large numbers of tribals who live in the non-excluded areas and who without reservation would have no chance of being represented in the Legislature. The case of the tribals is not essentially different from that of the Scheduled Castes and they are in fact more backward in education and in their economic condition than the Scheduled Castes. Representation in proportion to their numbers in the legislatures, even if some of them are not vocal or able to argue their case will emphasize the importance and urgency of their problems. And it is to the interest of the country to see that these original inhabitants of the Indian soil are brought up to the level of the rest so that they can contribute in due measure to the progress of the country rather than be a dragon the rest. We do not consider that the method of indirect election or nomination should be resorted to. The aboriginals have to take part in direct election some time and the sooner their training for this starts the better.

Having regard to the circumstances of the Madras island and the Punjab Excluded Areas, we recommend special representation as follows:—

Laccadive Group 1

Lahaul and Spiti 1

Amindivi Group 1

Minicoy 1

It seems clear to us that these areas cannot be included in other constituencies, nor would they be suitably represented if so included.

10. **LEGISLATION—**

(a) **Areas to be Scheduled.**—The provisions for partially excluded and excluded areas in the 1935 Constitution are designed to prevent the application of unsuitable legislation, to permit the making of special rules and regulations required for any different system of administration needed in the aboriginal areas, and for the provision of funds at the discretion of the Governor for the totally excluded areas. Although in most of the Provinces, there has been a good deal of assimilation of the tribal people to the people of the plains, yet the social system of the tribes is different from that of the plains people in a number of the partially excluded areas. In the excluded areas, of course as already pointed out, there are people like Tibetans, the Chakma, Miro and Mogh of the Chittagong Hill Tracts, the islanders of the Laccadive Islands and so on. In the partially excluded areas, the tribes of Orissa and Chhota Nagpur and even the Gonds of the C. P. and the Bhils of Bombay who have assimilated the life of the plains to a greater extent than others have different social customs. The law of inheritance and the systems of marriage and divorce are different from those of other communities. It is possible of course for the legislatures to bear these features in mind and pass different laws just as different laws have been passed for Hindus and Muslims but there are other subjects as well in which the tribes will have to be treated on a different footing. In places like the Agency tracts, for example, the population is as yet too primitive to be able to understand or make use of the complicated procedure and law of the civil, criminal and revenue courts. We have mentioned earlier the features peculiar to the Santal Parganas and the Jaunsar Bawar Pargana. Even in the more advanced tracts of the Central Provinces of Bombay, the tribal is at a serious disadvantage on account of his poverty and ignorance and the procrastination of courts and officials and is easily victimized. This is of course true of all poor and simple rural folk, but it is clear that in the case of the aboriginal, it applies to a community found predominantly in certain areas and not to individuals. Thus a simplified system of dispensation of justice will be necessary in certain areas. There is again the question of land legislation. The land is the only thing left to the aboriginal, who does not follow non-agricultural professions to any appreciable extent as yet. In the Chhota Nagur Division different kinds of tenure have been recognized for the tribals and in any case, even where the tenure is simple and common to other areas, grant of the power of alienation to the tribals is certain to result in his gradual expropriation. We are thus led to the conclusion that it is necessary to provide that in certain areas laws of the provincial legislature which are likely to be based largely on the needs of the majority of the population should not apply automatically, if not generally, at least in certain specified subjects. A general provision of this kind is of course a matter of convenience and would eliminate the need for the legislature to provide special clauses or saving clauses. It would also enable special consideration if the legislation is to be applied to the area. This of course involves notification of areas and we recommend provision for the purpose. We propose that the areas should be known as "Scheduled Areas" in future.

(b) **Application to Scheduled Areas.** —The next question which arises is whether any special mechanism is to be provided or whether the matter should be left to the legislature without any additional safeguard to apply legislation. The Government of Orissa have apparently thought it sufficient if the laws are specially extended by the Provincial Government and other Governments may

hold similar views. The fact that non-tribals will be in a majority in all the legislatures and the fears which the tribals entertain that their interests and special customs and circumstances may be ignored must in this context be taken into account. Doubtless they would like to feel that they themselves have a voice in the decision and that a decision is not taken by persons unacquainted or imperfectly acquainted with their special circumstances and not genuinely interested in their welfare. The feeling which prevails in this matter has been expressed thus: "Speaking purely hypothetically, it should not be possible for the member representing Chittagong to be able to oblige his constituents by getting some radical changes made to the detriment of the hill tribes, which is of local advantage to them." (Lt.-Col. Hyde, D. C. Chittagong Hill Tracts) and "Ministers may find that owing to political pressure from organised pressure groups, that it is impossible for them to give the protection which they desire to give". (Grigson, aboriginal Tribes Enquiry Officer, C. P. & Berar.)

The present system under which the Governor in his discretion applies the legislation is not likely to appeal as this principle will be regarded as undemocratic, even though the Governor in future may be an elected functionary. An alternative mechanism is therefore necessary. We have considered the question in all its aspects and come to the conclusion that in respect of certain subjects, laws passed by the Provincial Legislature should not be applied to the Scheduled Areas if the Tribes Advisory Council does not consider them suitable for those areas. We have also provided that in other subjects the Provincial Government should have the power to withhold or modify legislation on the advice of the Tribes Advisory Council. (Para*. 15).

(c) **Special Subjects.**—It has been stated above that in certain subjects legislation should not apply if considered unsuitable by the Tribes Advisory Council. We consider such a definition desirable to prevent any unnecessary complication of legislative procedure or delaying of legislation. In most of the areas ordinary legislation is applicable and the policy has been and should be to apply legislation normals unless there is any special reason to the contrary. As a matter of general concern restriction seems necessary only in certain matters and we recommend that all legislation relating to (1) social matters (2) occupation of land including tenancy laws, allotment of land and setting apart of land for village purposes, and (3) village management including the establishment of village panchayats should be dealt with in this manner.

13. CRIMINAL AND CIVIL COURTS—

We have noticed that there are areas where the regular machinery for the disposal of criminal and civil cases is not in operation and an "Agency" system is in force. The civil procedure has in particular been substituted by a simplified procedure. We have no doubt that simplified procedure should be possible for the disposal of petty criminal and civil cases and recommended accordingly that except where the regular procedure is already in force, as simplified system should continue to be in forced. We are not however in a position to say whether the exact procedure followed at present needs modification or not.

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* Reference to para is to para in the original reports.

14. **RESERVATION IN FEDERAL LEGISLATURE—**

We have recommended reservation of seats in the Provincial Legislature. We recommend reservation in the Federal Legislature also on the basis of population in each province. On the scale contemplated in the draft Union Constitution, this would be 5 for Bihar, 3 for C. P., and 2 each for Bombay and Orissa.

15. **PROVINCIAL TRIBES ADVISORY COUNCIL—**

Most of the Provincial Governments have found it necessary to set up advisory bodies for the proper administration of the tribal areas. In our view, it is necessary that there should be a body which will keep the Provincial Government constantly in touch with the needs of the aboriginal tracts (Scheduled Areas) in particular and the tribal for such a council requires little explanation. Whatever legal machinery is set up, it is no fancy to suggest that its actual translation into practice may not be in accord with its spirit, and besides the legal machinery itself may be found defective in practice. For a number of years clearly, the development of the aboriginals will require the most meticulous care. There are many ways in which the aboriginals interests may be neglected, and it is known that regardless of certain prohibitory rules they are subjected to harassment at the hands of subordinate government officials and contractors. In spite of the abolition of begar, for instance, there are still a good many cases of it in fairly serious form coming to notice from time to time. The working of provincial legislation or the machinery of administration in whole or in not needs constant scrutiny and regulation. The reclamation of the tribal is not likely to be an easy matter since it is seen from experience that even where provision for local bodies exists the aboriginal requires special encouragement to take active part in it. We have also pointed out that the representation of the aboriginal in the legislature is likely to be weak for some time to come. To exercise special supervisory functions therefore and to bring to the attention of the Provincial Government from time to time the financial and other needs of the aboriginal areas, the working of development schemes, the suggestion of plans, or legislative or administrative machinery, it is necessary to provide by statute for the establishment of a Tribes Advisory Council in which the tribal element is strongly represented. There may be no objection to the advisory council being made use of for supervision of the interests of other backward classes as well. We are of the view that the establishment of an Advisory Council for the next ten years at least is necessary in the Provinces of Madras, Bombay, West Bengal, Bihar, C. P. & Berar and Orissa, and we recommend that statutory provision be made accordingly. We have referred earlier (Para. 11) to the part that the Tribes Advisory Council will play in respect of Legislation.

16. **CENTRAL COMMISSION—**

We have indicated above that unless the attention of the Government is concentrated with special emphasis on the problems of the aboriginals and the needs of the Scheduled Areas, there is little likelihood of any development. We do not intend any reflections on Provincial Governments if we remark that they may fail to take adequate interest. The provincial finances may also need to be strengthened by subventions from the Central fisc and we have in fact recommended that the Federation should come to the aid of the provinces to the extent necessary. We are of the view therefore that the Federal Government should take direct interest in the development of the tribes. We consider that it should be possible for the Federal Government to institute at any time a special Commission to enquire into the progress of plans of develop-

ment and also into the conditions of the Scheduled Areas and tribals in general. In any case, such a commission should be instituted on the expiry of ten years from the commencement of the new Constitution. We have no doubt that the provinces would welcome such a commission and were commend that provision for its appointment should be made in the Union Constitution.

17. **CENTRAL SUBVENTIONS—**

The development of the Scheduled Areas is likely to involve heavy expenditure on account of the nature of the country and other practical difficulties. It is obvious that in the hilly tracts the construction and maintenance of roads will require a good deal of money. Most of these tracts are devoid of any attraction for officials who thus need to be specially compensated. The provision of schools, medical facilities and water supply which are dire needs will doubtless make a heavy demand on the budget. While we are clearly of the view that to the maximum possible extent that the funds required for the welfare and development of these areas should be found in the provinces themselves, we feel that unless the Central Government provides the necessary assistance, some of the Provincial Governments at any rate may find it impossible to carry out schemes of improvement. We recommend therefore that for all schemes of development approved by it the Central Government should contribute, in whole or in part, funds for the implementation of the development schemes. The Central Government should also be in a position to require the Provincial Governments to draw up schemes for the Scheduled Areas. We have recommended statutory provision to this effect.

18. **PROVINCIAL FUNDS—**

The main anxiety of the Scheduled Areas will centre round the attitude of the legislature in the provision of funds. These areas as already pointed out will be weakly represented and, being deficit areas, may be dealt with on the principle of he who pays more gets more. In the absence of a keen demand it is even possible that there is a diversion of revenues to the more vociferous areas. We have remarked earlier that one of the weakness of the system of partial exclusion is the lack of financial safeguards. There is very clearly a necessity for making the required provisions to remove this weakness. It has been suggested to us that funds for the development of the Scheduled Areas should be provided by the fixation of a statutory percentage of the provincial revenues. It may be easy to provide by statute that such and such a proportion of the Provincial revenues should be spent upon the Scheduled Areas, but there is first of all the difficulty of determining the ratio. The needs of the Scheduled Areas are great in comparison with the population and in some cases even with the extent of the tract. Secondly if a rigid statutory ratio is fixed, it may in practice be found that it is not possible to adhere to it. The framing of a budget has to take into account many factors and rigid statutory ratio is likely to cause difficulties to the Provincial Governments, apart from being perhaps ineffective in providing the real needs of the hill tracts. If a low ratio is fixed it is practically certain that the Provincial Governments will not exceed that. If a high ratio is fixed, the Provincial Government may be unable to meet it and in any case the working out of an acceptable ratio itself seems impracticable in the circumstances without a careful examination of the needs of all the different tracts. We feel consequently that no direct statutory safeguard of this nature is possible. The other possibility is that the Governor in his discretion should set apart funds and that these funds should be outside the vote of the legislature. We feel that such a provision is likely to be repugnant to the provincial legislature.

We recommend however that the revenues derived from and the expenses incurred on the Scheduled Areas from the provincial budget should be shown separately so as to prevent the needs of these areas being overlooked through incorporation in the general items. Such a separate statement will of course afford a better opportunity for scrutiny and criticism.

19. **GOVERNOR'S RESPONSIBILITY—**

In connection with financial safeguards the view was expressed that the formulation of a plan of improvement affords sufficient guarantee for the expenditure of funds. We are of the view that in the provisions corresponding to the Instrument of Instructions the Governor should be required to see that a suitable scheme of development is drawn up and implemented as far as possible (See Para. *17).

20. **TRIBAL MINISTER—**

Connected with the formulation of development schemes and the provision of adequate expenditure for the hill tracts is the need for the appointment of a separate Minister to give effect to the plans and to look after the interests of the aboriginals. The tribal population in the C.P., Orissa and Bihar forms a considerable proportion of the total population and on this ground alone the tribals have a case for representation in the Provincial Government. In the C.P., the tribal population is nearly 18 per cent. In Orissa, almost a fifth of the population is tribal, and in Bihar there are over 5 millions of them constituting about 14 per cent. Partly in order to provide representation for the tribals and in any case to see that adequate attention is paid to their administration we are of the view that there should be a separate Minister for the tribal areas and tribes in C.P., Orissa and Bihar and that this should be provided by statute. The Minister should be a tribal himself unless a suitable person cannot be found. We may add that the Government of Orissa have recognised that there should be a separate portfolio for the welfare of the backward classes under the new constitution.

21. **SERVICES—**

It has been pointed out that the tribals constitute an appreciable proportion of the population particularly in some Provinces. On this account, the policy of recruitment of a due proportion of aboriginals having regard to reasonable efficiency, into the Government services is justified and necessary and must be followed. Apart from this, however, it is necessary that there should be an adequate number of tribals in the services so that the constant complaints of mishandling by non-tribal Officials, particularly, of such servants as forest guards, constables or excise peons and clerks can be minimized. Moreover, it is only by adequate representation in the Government and local bodies' services that the tribal can gain the necessary confidence and status.

We do not consider that a separate service of tribal people is necessary or desirable for the Scheduled Areas, and we recommend that they should be recruited to a general cadre. This will enable them to come into contact with non-tribes people and we also consider that there is no objection to the posting

* Reference to para is to para in the original reports.

of selected non-tribal officials to the Scheduled Areas. In fact, in the evidence before us, opinion has been practically uniform that there is no necessity for a special cadre of officials for the hill tracts and what is really required is selection of sympathetic officials for working in the hills. We would draw attention here to the importance of providing suitable accommodation and facilities for medical attention to officials serving in the scheduled areas. Malaria and other diseases constitute the scourge of these hill tracts and unless special attention is paid to the health of the staff it is unlikely that development schemes will make much headway. The provision of facilities for recreation and adequate compensatory allowances for officials posted to these areas should be kept in mind. Any tendency to treat these posts as penal posts or posts for the safe deposit of incompetents must be strongly deprecated.

22. **TRIBAL PANCHAYATS—**

We have recommended that simplified rules should be continued where they are in force in the Scheduled Areas for the trial of civil and criminal cases. Wherever trial institutions are still fairly vigorous, we would recommend that they should be utilised to try petty civil disputes and criminal cases. The establishment of the more advanced type of village panchayat is recommended wherever possible.

23. **SHIFTING CULTIVATION—**

Shifting cultivation or podu is practised mostly in the Koraput and Ganjam agency tracts of Orissa and in the similar agency tracts of Madras. In the Central Provinces it is prohibited by law and is not practised to any appreciable extent except in the Baiga Chak where it is permitted and in the Zamindar is. We have nothing to add to the recommendations of the Orissa Partially Excluded Areas Inquiry Committee. This method of cultivation should be eliminated, as soon as possible.

24. **PROHIBITION—**

We invite the attention of Provincial Governments to the recommendations made by Mr. Symington (Bombay) and the Orissa Partially Excluded Areas Committee. Temperance propaganda should be taken up as part of the welfare work. A feeling has been growing among aboriginals, particularly in the tracts of Bombay and the Central Provinces that prohibition is to their advantage, and this feeling should be fostered among all the tribals.

25. **LAND—**

The importance of protection for the land of the tribals has been emphasised earlier. All tenancy legislation which has been passed hitherto with a view to protecting the aboriginal has tended to prohibit the alienation of the tribals land to non-tribals. Alienation of any kind, even to other tribals, may have to be prohibited or severely restricted in different stages of advancement are concerned. We find however that Provincial Governments are generally alive to this question and that protective laws exist. We assume that these will continue to apply and as we have made special provision to see that land laws are not altered to the disadvantage of the tribal in future, we do not consider additional restrictions necessary. As regards the allotment of new land for cultivation or residence however, we are of the view that the interests of the tribal need to be safeguarded in view of the increasing pressure on land

everywhere. We have provided accordingly that the allotment of vacant land, belonging to the State in Scheduled Areas should not be made except in accordance with special regulations made by the Government on the advice of the Tribes Advisory Council.

26. **MONEY-LENDERS—**

Connected with the protection of the land is the need for prevention of exploitation by money-lenders. We consider it necessary that in the Scheduled Areas money-lenders should not be permitted at all and that at any rate they should be allowed to operate under licence and stringent control only.

27. **THE SCHEDULED AREAS—**

It has been pointed out that areas like Sambalpur, Angul and Darjeeling need no longer be treated as partially excluded areas. The U. P. Government are of the view that the Khat Haripur Bias should be detached from the Hill Sub-division. They have also recommended the removal of the Dudhi Partially Excluded Areas. The population of the partially excluded areas in the United Provinces is small and the Jaunsar Bawar Pargana is not inhabited by people who are in an ethnic sense tribals. We have not recommended a Tribes Advisory Council for U. P. and we do not consider it necessary to schedule either of these areas. Similarly we do not consider it necessary to schedule the Spiti area of the Punjab. In all these tracts, it will be open to the provincial Government to apply the provisions of Part II of the law proposed by us. In Bombay, we consider that certain areas in the West Khandesh District and the partially excluded areas of the Broach and Panch Mahals District should henceforth be administered without any special provisions. The C. P. areas are retained as they are and in Chhota Nagpur we are provisionally of the view that only the three districts which have a majority of tribals should be scheduled. The schedule proposed is shown as Appendix D*.

On the other hand, there may be other areas which the provincial Governments may like to bring under special administration. This can be done by the Provincial Government in their discretion. For the protection of the land of tribes line the Lepcha in Darjeeling the Provincial Government could make the appropriate provision of the chapter relating to the Scheduled areas applicable to the area concerned.

28. **DRAFT PROVISIONS—**

We enclose a draft of provisions contemplated by us in roughly legal form (Appendix C*).

A.V. THAKKAR
Chairman
D. N. SAMANTA
THAKUR PHUL BHANU SHAH
RAJ KRUSHNA BOSE
JAIPAL SINGH
P. C. GHOSH

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* Reference to appendices are to appendices in the original reports.

[Annexure IV]

APPENDIX D

Part I — Excluded Areas

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

BENGAL

The Chittagong Hill Tracts.

THE PUNJAB

Spiti and Lahaul in the Kangra District.

Part II — Partially Excluded areas

MADRAS

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

BOMBAY

In the West Khandesh District, the Shahada, Nandurbar and Taloda Taluks, the Navapur Petha and the Akrani Mahal, and the villages belonging to the following Mehwassi Chiefs'namely, (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walwi of Gaohali, (5) the Wassawa of Chikhli, and (6) the Parvi of Navalpur.

The Satpura Hills reserved forest areas of the East Khandesh District.

The Kalvan Taluk and Peint Peth of the Nasik District.

The Dhahanu and Shahapur Taluks and the Mokhada and Umbergaon Pethas of the Thana District.

The Dohad Taluk and the Jhalod Mahal of the Broach and Panch Mahal District.

BENGAL

The Darjeeling District.

The Dewanganj, Sribardi, Nalitabori, Haluaghat, Durgapur and Kalmakanda police stations of the Mymensingh District.

THE UNITED PROVINCES

The Jaunsar-Bawar Pargana of the Dehra Dun District.

The portion of the Mirzapur District south of the Kaimur Range.

BIHAR

The Chhota Nagpur Division.

The Santal Parganas District.

THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil, and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindar is in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partapgarh (Pagara), Almod and Sonpur jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabar as and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District. The Bhainsdehi Tahsil of the Betul District.

ORISSA

The District of Angul.

The District of Sambalpur.

The areas transferred from the Central Provinces under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

The Ganjam Agency Tracts.

The areas transferred to Orissa under the provisions of the aforesaid Order from the Vizagapatam Agency in the Presidency of Madras.

APPENDIX D

[Annexure V]

I

Statement showing the total population and Tribal population of Provinces:—

Name of Province	Total Population	Tribal Population	Percentage
Madras	49,341,810	562,029	1.1
Bombay	20,849,840	1,614,298	7.7
Bengal	60,306,525	1,889,389	3.1
United Provinces	55,020,617	289,422	.53
Punjab	28,418,819	. .	. .
Bihar	36,340,151	5,055,647	13.9
C.P and Berar	16,813,584	2,937,364	17.5
Assam	10,204,733	2,484,996	24.4
N.W.F.P	3,038,067	. .	. .
Orissa	8,728,544	1,721,006	19.7
Sind	4,535,008	33,819	0.81
Ajmer-Merwara	583,693	91,472	15.6
Andaman and Nicobar	33,768	11,076	32.8
Baluchistan	501,631	3	. .
Coorg	168,726	19,723	11.7
Delhi	917,939	. .	. .

Source : 1941 Census Table

II

Excluded and Partially Excluded Areas Population

(Provincial Totals)

Name of Province	Areas in Sq. Miles	Total Population	Aboriginal or Backward class	Percentage
Madras	Excluded Areas— 9.62 Sq.Miles + $201\frac{3}{4}$ acres.	18,357	18,335	99.9
	Partially Excluded Areas— 6,792.31	493,026	333,372*	67.6
Bombay	Excluded Areas— *Nil*			
	Partially Excluded Areas— 6,697†	1,125,471	663,528	58.9
Bengal	Excluded Areas— 5,007	247,053	233,392	94.5
	Partially Excluded Areas— 2,518	977,665	190,112	19.4
United Provinces	Excluded Areas— *Nil*			
	Partially Excluded Areas— 2,250	202,000	143,600	71.1
Punjab	Excluded Areas— 4,695	11,700	11,700 (Tibetans)	100
	Partially Excluded Areas— *Nil*			

*Includes 72,809 Backward Class.

† Does not include the area of "Satpura Hills Reserved Forest".

Name of Province	Areas in Sq. miles	Total Population	Aboriginal or Backward Class	Percentage
Bihar	Excluded Areas— *Nil*			
	Partially Excluded Areas— 32,592	9,750,846	4,451,109	45.6
Central Provinces and Berar	Excluded Areas— *Nil*			
	Partially Excluded Areas— 19,856	1,467,681	829,918	36.6
Orissa	Excluded Areas— *Nil*			
	Partially Excluded Areas— 19,831	2,939,416	1,560,104	53.07
GRAND TOTAL	100,248	17,233,205	8,435,190	48.95

III

Statement Showing Total Population and Tribal Population By Districts

Province or District	Total Population	Tribal Population	Percentage
MADRAS PROVINCE			
British Territory	49,341,810	562,029	1.14
Vizagapatam	3,845,944	286,923	7.46
Agency	421,437	140,721	63.55
Plains	3,624,507	146,202	4.03
Godavari East	2,161,863	101,532	4.70
Agency	271,569	97,200	35.79
Plains	1,890,294	4,332	.23
Godavari West	1,380,088	1,999	.14
Kistna	1,444,294	345	.02
Guntur	2,277,283	2,246	.10
Nellore	1,617,026	15	..
Cuddapah	1,056,507	19	..
Kurnool	1,146,250	5,878	.51
Bellary	1,051,235	548	..
Anantapur	1,171,419	4	..
Madras	777,481	2	..
Chingleput	1,823,955	39	..
Chittoor	1,632,395	..	..
North Arcot	2,577,540	..	..
Salem	2,869,226	6	..
Coimbatore	2,809,648	12,440	.44
South Arcot	2,608,753	..	..
Tanjore	2,563,375	213	..
Trichinopoly	2,194,091	24	..
Madura	2,446,601	8	..
Ramnad	1,979,643	..	..
Tinnevelley	2,244,543	161	..
Nilgiris	209,709	62,951	30.20
Malabar	3,929,425	34,366	.87
South Kanara	1,523,516	52,312	3.43
BOMBAY PROVINCE			
Province of Bombay Proper	20,849,840	1,614,298	7.74
Bombay City	1,489,883	4,606	.31
Northern Division	5,276,593	874,103	16.56
Ahmedabad	1,372,171	8,730	.64
Ahmedabad City	591,267	5,744	.97
Broach & Panch Mahals	924,527	268,617	29.06
Kaira	914,957	5,161	.57
Surat	881,058	320,575	36.37
Thana	932,733	257,130	27.57
Bombay Suburban	251,147	13,890	5.53
Central Division	8,197,398	667,828	8.15
Ahmednagar	1,112,229	41,146	3.60
East Khandesh	1,327,722	61,054	4.60
West Khandesh	912,214	357,719	39.21
Nasik	1,113,901	167,280	15.02
Poona	1,359,408	36,835	2.71
Satara	1,327,249	11,014	.08
Sholapur	1,014,670	2,780	.21
Southern Division	5,885,971	67,761	1.15
Belgaum	1,225,428	1,674	.14
Bijapur	975,982	1,008	.10
Dharwar	1,210,016	1,414	.12
Kanarah	441,157	197	.04
Kolaba	668,922	62,170	9.29
Ratnagiri	1,373,466	1,298	.09

Province or District	Total Population	Tribal Population	Percentage
BENGAL PROVINCE			
British Territory	60,306,525	1,889,389	3.13
Burdwan Division	10,287,369	706,729	6.87
Burdwan	1,890,732	151,355	8.0
Birbhum	1,048,317	74,084	7.07
Bankura	1,289,640	154,246	11.96
Midnapur	3,190,647	253,625	7.95
Hooghly	1,377,729	69,500	5.04
Howrah	1,490,304	3,919	.26
Presidency Division	12,817,087	99,235	.77
24-Parganas	3,536,386	51,085	1.44
Calcutta	2,108,891	1,688	.08
Nadia	1,759,846	12,671	.72
Murshidabad	1,640,530	26,138	1.59
Jessore	1,828,216	4,978	.27
Khulna	1,943,218	2,675	.14
Rajshahi Division	12,040,465	776,729	6.44
Rajshahi	1,571,750	67,298	4.28
Dinajpur	1,926,833	182,892	9.49
Jalpaiguri	1,089,513	279,296	25.63
Darjeeling	376,369	141,301	37.54
Rangpur	2,877,847	18,200	.63
Bogra	1,260,463	14,387	1.14
Pabna	1,705,072	6,906	.45
Malda	1,232,618	66,449	5.39
Dacca Division	16,683,714	65,398	.39
Dacca	4,222,143	4,029	.10
Mymensingh	6,023,758	59,722	.99
Faridpur	2,888,803	1,363	.05
Bakarganj	3,549,010	284	.01
Chittagong Division	8,477,890	241,298	2.85
Tippera	3,860,139	1,524	.04
Noakhali	2,217,402	34	....
Chittagong	2,153,296	6,348	.29
Chittagong Hill Tracts	247,053	233,392	94.47
UNITED PROVINCES			
British Territory	55,020,617	289,422	.53
Agra Province	40,906,147	289,244	.71
Meerut Division	5,716,451	70	....
Dehra Dun	266,244	....	....
Saharanpur	1,179,643	....	....
Muzaffarnagar	1,056,759	. ...	....
Meerut	1,896,582	....	....
Bulandshahar	1,317,223	70	....
Agra Division	5,326,768	79	....
Aligarh	1,372,641	1	....
Muttra	806,992	....	...
Agra	1,289,774	....	....
Etah	984,760	78	.01
Rohilkhand Division	6,195,996	57	....
Bareilly	1,176,197	28	....
Bijnor	910,223	11	....
Budaun	1,162,322	....	....
Moradabad	1,473,151	17	....
Shahjahanpur	983,385	1	....
Pilibhit	490,718	...	....

Province or District	Total Population	Tribal Population	Percentage
Allahabad Division	6,014,813	19,139	.32
Farrukhabad	955,377	47	...
Etawah	883,264	143	.02
Cawnpore	1,556,247	1,083	.70
Fatehpur	806,944	241	.03
Allahabad	1,812,981	17,625	.97
Jhansi Division	2,553,492	26,439	1.04
Jhansi	773,002	12,494	1.06
Jalaun	482,384	6,361	1.31
Hamirpur	575,538	7,584	1.32
Banda	722,568	....	...
Benares Division	5,545,257	141,661	2.55
Benares	1,218,629	21,152	1.74
Mirzapur	899,929	43,383	4.82
Jaunpur	1,387,439	3,353	.24
Ghazipur	985,380	21,641	2.20
Ballia	1,053,880	52,133	4.95
Gorakhpur Division	7,972,108	101,746	1.28
Gorakhpur	3,963,574	99,076	2.50
Basti	2,185,641	83	...
Azamgarh	1,822,893	2,587	.14
Kumaon Division	1,581,262	53	...
Nainital	291,861	...	...
Almora	687,286	...	...
Garhwal	602,115	53	.01
Oudh Province	14,114,470	178	...
Lucknow Division	6,530,932	7	...
Lucknow	949,728	7	...
Unao	959,542	...	...
Rae Bareli	1,064,804	...	...
Sitapur	1,293,554	...	...
Hardoi	1,239,279	...	...
Kheri	1,024,025	...	...
Fyzabad Division	7,583,538	171	...
Fyzabad	1,319,425	157	.01
Gonda	1,719,644	...	...
Bahraich	1,240,569	...	...
Sultanpur	1,100,368	14	...
Partapgarh	1,041,024	...	...
Bara Banki	1,162,508	...	...
BIHAR PROVINCE			
British Territory	36,340,151	5,055,647	13.91
Patna Division	7,265,950	300,004	4.12
Patna	2,162,008	12,722	.59
Gaya	2,775,361	258,032	9.33
Shahabad	2,328,581	29,250	1.26
Tirhut Division	11,959,827	31,378	.35
Saran	2,860,537	18,314	.64
Champaran	2,397,569	20,086	.83
Muzaffarpur	3,244,651	1,996	.05
Darbhanga	3,457,070	982	.03
Bhagalpur Division	9,598,025	1,393,041	14.45
Monghyr	2,564,544	53,421	2.08
Bhagalpur	2,408,879	104,879	4.35
Purnea	2,390,105	104,856	4.38
Santal Parganas	2,234,497	1,129,885	50.56

Province or District	Total Population	Tribal Population	Percentage
Chhota Nagpur Division	7,516,349	3,321,224	44.19
Hazaribagh	1,751,339	478,253	27.31
Ranchi	1,675,413	1,173,142	70.02
Palamau	912,734	323,106	35.40
Manbhum	2,032,146	678,126	33.37
Singhbhum	1,144,717	668,597	58.41
CENTRAL PROVINCES AND BERAR			
British Territory	16,113,584	2,937,364	17.47
Central Provinces	13,208,718	2,663,959	20.16
Jubbulpore Division	3,691,112	789,335	21.39
Saugor	939,068	82,107	8.74
Jubbalpore	910,603	166,958	18.33
Mandla	504,580	304,099	60.27
Hoshangabad	823,585	123,621	15.01
Nimar	513,276	112,570	21.93
Nagpur Division	3,924,985	854,939	21.78
Betul	438,342	168,229	38.38
Chhindwara	1,034,040	395,781	38.28
Wardha	519,330	51,848	9.98
Nagpur	1,059,989	66,471	6.27
Chanda	873,284	172,610	19.77
Chattisgarh Division	5,592,621	1,019,665	18.23
Bhandara	963,225	115,173	11.96
Balaghat	634,350	138,693	21.86
Raipur	1,516,686	273,260	17.01
Bilaspur	1,549,509	287,680	18.56
Durg	928,851	104,859	20.91
Berar Province	3,604,866	273,405	7.86
Amraoti	988,524	63,210	6.39
Akola	907,742	30,456	3.36
Buldana	820,862	19,849	2.42
Yeotmal	887,738	159,890	18.01
ASSAM PROVINCE			
British Territory	10,204,733	2,484,996	24.35
Surma Valley and Hill Division	4,218,875	683,546	16.20
Cachar	641,181	178,264	27.80
Sylhet	3,116,602	69,907	2.24
Khasi & Jaintia Hills (British)	118,665	103,567	87.28
Naga Hills	189,641	184,766	97.43
Lushai Hills	152,786	147,042	96.24
			29.74
Assam Valley Division	5,919,228	1,757,664	23.46
Goalpara	1,014,285	237,993	15.66
Kamrup	1,264,200	197,926	35.39
Darrang	736,791	260,748	23.43
Nowgong	710,800	166,525	33.57
Sibsagar	1,074,741	360,768	37.46
Lakhimpur	894,842	335,230	88.78
Garo Hills	223,569	198,474	66.49

Province or District	Total Population	Tribal Population	Percentage
Assam Valley Division—contd.			
Sadiya Frontier Tracts	60,118	39,974	58.54
Balipara Frontier Tracts	6,512	3,812	58.54
ORISSA PROVINCE			
British Territory	8,728,544	1,721,006	19.72
Cuttack	2,431,427	55,280	2.27
Balasore	1,029,430	29,757	2.69
Puri	1,101,939	29,555	2.68
Sambalpur	1,182,622	232,095	19.71
Ganjam	1,855,264	433,687	23.38
Plains	1,392,188	59,658	4.29
Agency	463,076	374,029	80.77
Koraput	1,127,862	940,632	83.40
SIND PROVINCE			
British Territory	4,535,008	36,819	0.81
Dadu	389,380	154	0.31
Hyderabad	758,748	769	0.01
Karachi	713,900	884	0.12
Larkana	511,208	.....	.....
Nawabshah	584,178	1,326	0.23
Sukkur	692,556	51	0.01
Thar Parkar	581,004	33,635	5.79
Upper Sind Frontier	304,034	.....	.....
AJMER-MERWARA	583,693	91,472	15.67
ANDAMANS & NICOBARS			
Andamans	33,768	11,076	32.80
Nicobars	21,316	.....	.....
Coorg	12,452	11,076	88.95
	168,726	19,723	11.69

IV

Schedule 13 to Government of India (Provincial Legislative Assemblies) Order, 1936

BACKWARD TRIBES

PART I—MADRAS

1. Bagata.
2. Bottadas—Bodo Bhottada, Muria Bhottada and Sano Bhottada.
3. Bhumias—Bhuri Bhumia and Bodo Bhumia.
4. Bissoy—Barangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoria, Kollai, Konde, Paranga, Penga-Jodia, Sodo Jodia and Takora.
5. Dhakkada.
6. Domb—Andhiya Dombs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telaga and Ummia.
7. Gadabas—Boda Gadaba, Cerlam Gadaba, Franji Gadaba, Jodia Gadaba, Olaro Gadaba, Pangi Gadaba and Paranga Gadaba.
8. Ghasis—Boda Ghasis and San Ghasis.
9. Gondi—Modya Gond and Rajo Gond.
10. Goundus—Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.
11. Kosalya Goudus—Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus, Doddu Kamariya, Dudu Kamaro, Ladiya Goudus and Pullosoriay Goudus.
12. Magatha Goudus—Bernia Goudu, Boodo Magatha, Dongayath Goudu, Ladya Goudu, Ponna Magatha and Sana Magatha.
13. Serithi Goudus.
14. Holva.
15. Jadapus.
16. Jatapus.
17. Kammaras.
18. Khattis—Khatti, Kommaro and Lohara.
19. Kodu.
20. Kommar.
21. Konda Dhoras.
22. Konda Kapus.
23. Kondareddis.
24. Kondhs—Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs and Yenity Kondhs.
25. Kotia—Bartikar, Bentho Oriya, Dhulia or Dulia, Holva Paiko, Putiay, Sanrona and Sidho Paiko.
26. Koya or Gound with its sub-castes, Raja or Rasha Koyas, Lingadhari Koyas,

Koyas (ordinary) and Kottu Koyas.

27. Madigas.
28. Malas or Agency Malas or Valmikies.
29. Malis—Worchia Malis, Paiko Malis and Pedda Malis.
30. Maune.
31. Manna Dhora.
32. Mukha, Dhora-Nooka Dhora.
33. Muli or Muliya.
34. Muria.
35. Ojulus or Metta Komsalies.
36. Omanaito.
37. Paigarapu.
38. Palasi.
39. Palli.
40. Pentias.
41. Porjas—Bodo, Bonda, Daruva, Didua, Jodia, Mundili, Pengu/Rvdi and Saliya.
42. Reddi or Dhoras.
43. Relli or Sachandi.
44. Ronas.
45. Savaras—Kapu Savaras, Khutto Savaras and Maliya Savaras.

PART II—BOMBAY

1. Barda.
2. Bavacha.
3. Bhil.
4. Chodhra.
5. Dhanka.
6. Dhodia.
7. Dubla.
8. Gamit or Gamta.
9. Gond.
10. Kathodi, or Kathari.
11. Konkana.
12. Koli Mahadeb.
13. Mavchi.
14. Naikda or Nayak.
15. Pardhi, including Advichincher or Phanse Pardhi.
16. Patelia.
17. Pomla.
18. Powara
19. Rathawa.
20. Tadvi Bhill.
21. Thakur.
22. Valvai.
23. Varli.
24. Vasava.

PART III—BIHAR

A person shall be deemed to be a member of a backward tribe if and only if—

(*a*) he is resident in the Province and belongs to any of the following tribes:—

1. Asur.
2. Banjara.
3. Bathudi.
4. Bentkar.
5. Binghia.
6. Birhor.
7. Birjia.
8. Chero.
9. Chik Baraik.
10. Gadaba.
11. Ghatwar.
12. Gond.
13. Gorait.
14. Ho.
15. Jaung.
16. Karmali.
17. Kharia.
18. Kharwar.
19. Khetauri.
20. Khond.
21. Kisan.
22. Koli.
23. Kora.
24. Korwa.
25. Mahli.
26. Mal Paharia.
27. Munda.
28. Oraon.
29. Parhiya.
30. Santal.
31. Sauria Paharia.
32. Savar.
33. Tharu.

(*b*) he is resident in any of the following districts or police stations, that is to say the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas and the police stations of Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandil, Ichagarh, Barahabhum, Patamada, Banduan and Manbazar in the district of Manbhum and belongs to one of the following tribes: —

1. Bauri.
2. Bhogta.
3. Bhuiya.
4. Bhumji.
5. Ghasi.
6. Pan.
7. Rajwar.
8. Turi.

(*c*) he is resident in the Dhanbad sub-division or any of the following police stations in the Manbhum district, that is to say, Purulia, Hura, Pancha, Ragunathpur, Santuri, Nituria, Para, Chas, Chandan-Kiari and Kashipur, and belongs to the Bhumi tribe.

PART IV—CENTRAL PROVINCES

1. Gond.
2. Kawar.
3. Maria.
4. Muria.
5. Halba.
6. Pardhan.
7. Oraon.
8. Binjhwar.
9. Andh.
10. Bharia Bhumia.
11. Koti.
12. Bhattra.
13. Baiga.
14. Kolam.
15. Bhil.
16. Bhuinhar.
17. Dhanwar.
18. Bhaina.
19. Parja.
20. Kamar.
21. Bhunjia.
22. Nagarchi.
23. Ojha.
24. Korku.
25. Kol.
26. Nagasia.
27. Sawara.
28. Korwa.
29. Majhwar.
30. Kharia.
31. Saunta.
32. Kondh.
33. Nihal.
34. Birhaul (or Biror).
35. Rautia.
36. Pando.

PART V—ORISSA

A person shall be deemed to be a member of backward tribe if and only if —

(*a*) he is resident in the Province and belongs to any of the following tribes:—

1. Bagata.
2. Banjari.
3. Chenchu.
4. Gadaba.
5. Gond.
6. Jatapu.
7. Khond (Kond).
8. Konda-Dora.
9. Koya.
10. Paroja.
11. Saora (Savar).
12. Oraon.
13. Santal.
14. Kharia.
15. Munda.
16. Banjara.
17. Bingjia.
18. Kisan.
19. Koli.
20. Kora.

(*b*) he is resident in any of the following areas, that is to say, the Koraput and Khondmals districts and the Ganjam Agency and belongs to either of the following tribes: —

1. Dom or Dombo.
2. Pan or Pano.

(*c*) he is resident in the Sambalpur district and belongs to any of the following tribes:—

1. Bauri.
2. Bhuiya.
3. Bhumji.
4. Ghasi.
5. Turi.
6. Pan or Pano.

[Annexure VI]

APPENDIX D

Statutory Recommendations

PART I

A. The Provincial Government may at any time by notification apply the provisions of Part II of this Chapter or of any of its sections to such areas as may be specified in the notification, being areas inhabited by any of the tribes named in Schedule A (and hereinafter referred to as "the tribes").

B. (1) The number of representatives of the tribes in the Provincial Legislature shall not be less in proportion to the total number of representatives than the population of the tribes in the Province bears to its total population.

(2) In the Federal Legislature (House of the People) there shall be such number of representatives of the tribes of each Province as may be in accordance with the total population of the tribes in that Province on the scale prescribed in Section.

C. The election of the representatives of the tribes to the Provincial Legislature shall be by universal adult franchise.

PART II

D. As from the commencement of this Constitution the provisions of this Part shall apply to the areas specified in Schedule B to this Chapter (and hereinafter referred to as "the Scheduled Areas").

E. (1) The Provincial Government may, if so advised by the Tribes Advisory Council, by notification direct that any law passed by the Legislature shall not apply to a Scheduled Area or shall apply with such modifications as it may prescribe:

Provided that the Provincial Government shall, if so advised by the Tribes Advisory Council, direct that any law passed by the Provincial legislature in respect of the following subjects, that is to say, (i) all social matters including inheritance of property; (ii) occupation of land (not being forest reserved under the provisions of the Indian Forest Act or other law applicable) including tenancy laws, allotment of land, reservation of land for any purpose; (iii) village management, including the establishment of village panchayats, shall not apply to a Scheduled Area or shall apply with such modifications as it may prescribe with the concurrence of the said Council.

(2) The Provincial Government may, in consultation with the Tribes Advisory Council, make special regulations for a Scheduled Area on any matter not provided for by a law in force in the Area.

F. Vacant land in a Scheduled Area which is the property of the State shall not be allotted to a non-tribal except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council.

G. (1) The Provincial Government may, and if so advised by the Tribes Advisory Council shall, direct that no person shall carry on business in a Scheduled Area as a money lender except under and in accordance with the conditions of a licence issued by it or by an officer authorised by it in this behalf.

(2) Any contravention of an order issued by the provincial Government under sub-section (1) of this Section shall be an offence.

H. The revenue and expenditure pertaining to a Scheduled Area which is credited to or met from the funds of the Provincial Government shall be shown separately in the annual financial statement of the Provincial Government.

I. There shall be paid out of the revenues of the Federation such capital and recurring sums as may be necessary to enable the Provincial Government to meet the cost of such schemes of development as may be undertaken with the approval of the Federal Government for the purpose of raising the level of administration of the Scheduled Areas and all round development of the tribes to that of the rest of the province.

J. (1) There shall be established as soon as may be after the commencement of this Constitution in the Provinces of Madras, Bombay, West Bengal, Bihar, C. P. and Berar and Orissa, a Tribes Advisory Council to perform such functions as may be prescribed in this Constitution and to advise the provincial Government from time to time on all matters pertaining to the administration and welfare of the tribes and of the Scheduled Areas.

(2) The Tribes Advisory Council shall consist of not less than ten and not more than twenty-five members of whom three-fourths shall be elected representatives of the tribes in the Provincial Legislature (Lower House).

(3) The Provincial Government may make rules prescribing or regulating as the case may be:—

(a) the number of members of the Council, the mode of appointment of the members and of the Chairman or other office-bearers;

(b) the conduct of meetings and procedure in general;

(c) relations with officials and local bodies;

(d) all other incidental matters.

K. (1) The Federal Government may, at any time, and shall after the expiry of ten years from the commencement of this Constitution, institute a Commission to report on the administration of the tribes and the Scheduled Areas in general.

(2) The Federal Government may at any time require the Provincial Government to draw up and execute such schemes as it considers essential for the welfare of the tribes.

L. In the Provinces of Bihar, the Central Provinces and Berar and Orissa there shall be a separate Minister for Tribal Welfare:

Provided that the Minister may hold charge simultaneously of welfare work pertaining to Scheduled Castes or other backward classes or any other work.

M. Notwithstanding anything in the Criminal Procedure Code, 1898, or the Civil Procedure Code (Act V of 1908), the Provincial Government may make special regulations for a Scheduled Area for the trial of offences other than those punishable with imprisonment for five years or more or with death or transportation for life and of disputes other than those arising out of special laws respectively and may empower headmen or panchayats to try such cases.

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[Annexure VII]

APPENDIX D

FINAL REPORT

To

The Chairman

Advisory Committee on Minorities, etc.

DEAR SIR,

This is our final report written after our visit to Bihar and the United Provinces. It relates to the partially excluded areas of these provinces and the excluded areas of the Punjab in respect of all of which the recommendations contained in our interim report were provisional. Certain general recommendations have also been added.

2. With reference to Bihar we confirm the constitutional proposals already made by us *in toto.*

BIHAR

We consider it necessary in addition to refer to certain matters connected with the administration of this, the largest compact block of territory comprising any excluded area in India, which came to our notice during our tour. To begin with, the Christian section of the tribals, though small in number (*see* statement appended), is educationally and economically far in advance of the non-Christian tribals. The demand for education among the non-Christians is said to be negligible and this presumably is the result of their economic backwardness which makes it necessary that children should assist their parents in earning their livelihood. There are however allegations that the Christian teachers and educational officials encourage only Christian children, and as a good number of the schools are run by Christian Missions, the non-Christians lack facilities for education. The Christian again appear to be much better organised and vocal and they are found to take prominent part in local and political organisations. The other striking feature of this area is the feeling common among educated tribals and shared by non-tribals inconsiderable measure that Chhota Nagpur has little share in the administration commensurate with its area, population and industrial importance and is being neglected by the Government which is made up of elements interested mostly in the rest of Bihar. Certain non-aboriginal witnesses have expressed their views of the neglect of Chota Nagpur in no uncertain terms and suggested that the ameliorative measures claimed by the Government are purely defensive action prompted by the separation movement. Even when the Government is supposed to be resident at Ranchi, it is given as concrete proof of their lack of interest that they are mostly absent on tour in areas other than Chhota Nagpur in which they are interested. Dr. Sinha has also stated that the present Government has yet to do something "to capture the imagination of the people" and that under the present practice "the Honourable Ministers stay for a very short period at Ranchi—at their own will and convenience — and do not usually visit so much the aboriginal areas as they do those of the other three divisions of Bihar". We have referred to these statements not because we are in agreement with them or with a view to adjudicating on them but purely as indicative of the local atmosphere. Dr Sinha has referred to the absence of the aboriginal element in the Ministry and has recommended reconstitution.

The extreme expression of the discontent prevalent in Chhota Nagpur is the separatist movement which demands the formation of a new province of Jharkhand out of the partially excluded area. This movement is sponsored at present by the Adibasi Mahasabha

containing a very large advanced or Christian element but in Singhbhum and in the Santal Parganas also, a good proportion of non-Christians seem to have been affected by it. To borrow Dr. Sinha's words it is "capturing the imagination" of the tribals. Unmistakably also the movement is gaining sympathy among the non-aboriginals; and even if it be partly due to mere local ambition, the virtual exclusion of tribal elements from the Cabinet has undoubtedly contributed much to it. We have already held in our interim report that the question of the formation of a separate province is not for us to tackle but we would invite the attention of the Provincial and Central Governments to the separation movement, which seems to be gaining strength, as a symptom of the discontent which is simmering in varying intensity among all sections of the Chhota Nagpur population. At the same time we have noticed that the Cabinet of the Bihar Government and such an eminent public man as Dr. S. Sinha oppose the separation movement on the grounds very well shown in the brochure of Dr. Sinha. We have also received a number of telegrams from these areas saying that they thoroughly disapprove of the separatist movement.

We are inclined to the view which seems to be shared by Dr. Sinha also, that there should be adequate association of the people of the partially excluded areas, particularly the tribals, in the different branches of the administration including the Cabinet and that there can be neither satisfaction nor adequate progress until this is done. In short, the problem of administration in this tract must be dealt with not only by economic and educational improvements but also by remedies which recognise its political and psychological aspects; and we would lay the maximum emphasis on the urgency of action in both these directions.

UNITED PROVINCES

3. As regards the partially excluded areas of the United Provinces *viz.,* the Jaunsar-Bawar Pargana in the Dehra Dun District and the area comprising the Dudhi Tahsil and part of the Robertsganj Tahsil of the Mirzapur District, we find that both of these comparatively small areas are suffering from serious neglect. Although a committee was set up as early as 1939 to enquire into the administration of the Jaunsar-Bawar Pargana and a report was submitted by it in 1941, it is a matter for regret that no action has yet been possible although the report was ultimately made only by the official members of the Committee. We understand that another committee has been appointed recently this year to go into the matter by the Provincial Government and hope that speedy action will be taken on its report. The main matters which require attention in this area are as follows:—

(1) the fixation and collection of land revenue and distribution of "rights timber" through the agency of the Sayanas as well as the position of the Sayana in the village panchayat which gives rise to a great deal of oppression.

(2) survey resettlement of the area and removal of restrictions on the possession of land and reclamation of waste land by Koltas (local depressed castes of Hindus).

(3) the elimination of social evils like polyandry and veneral disease.

In the partially excluded area of the Mirzapur District which is inhabited by a majority of tribals we find that the administration is of a pretty primitive character. The figures given in the U. P. Government's factual memorandum for the Dudhi Government

Estate which are shown below indicate that the revenue from it is not utilised to the extent of even two-fifths of the administration of the area:—

	Income	Expenditure
1944-45	1,64,430	83,421
1945-46	2,96,002	88,002
1946-47	2,34,797	89,854
TOTAL	6,95,229	2,61,227 *i.e.* 37.6 per cent of the income

We would draw particular attention to the statement of witnesses that a very large percentage of the population of this area is suffering from venereal disease. In the Dudhi Estate the U. P. Government have themselves noted that there is a passage of land from the hands of the aboriginals to the non-aboriginals. It would appear that the rules of the Dudhi Estate are ineffective in preventing this since land can be surrendered to the Supurdar who re-allots the same to another person, most probably a non-aboriginal. Such a transfer unfortunately does not require the approval of the S.D.O. or the Collector. It does not appear that suitable steps have been taken to put a stop to this. Among other complaints are the working of the monopoly given to Messrs. Gladstone Wyllie and Company Ltd., for the collection and sale of lac which is terminable in the year 1952. The working of this monopoly under which only about one-seventh, or if we allow for overhead and working charges, not more than one-fourth, of the price realised by the company for the sale of the lac is obtained by the aboriginal cultivator tends to keep the aboriginal in a miserable condition. It does not appear to us that the Government have any comprehensive or fully considered programme for this area as yet.

The population of this tract is very small (1/3 per cent.) in comparison with the total population of the United Provinces. We would not on that account recommend for its future administration the proposals which we have recommended for some of the backward tracts of other provinces, but we are equally definite that special provisions for its development are essential, as without them it is certain that due attention will not be paid to its needs. Similarly although the inhabitants of the Jaunsar-Bawar Area, as pointed out in our interim report, are not tribals by race and we do not recommend inclusion in the schedule of our Interim Report special provisions are necessary for this area also. We recommend therefore constitutional provisions for both of these tracts as follows:—

(1) there should be an advisory committee consisting of tribes or backward people to the extent of not less than two-thirds of its membership to advise the Government on the development of the area;

(2) the estimated revenue and expenditure (including development schemes) pertaining to the area should be shown separately in the provincial budget;

(3) although general administration of the type in force in other districts may be applied to the tract, the trial of petty civil and criminal cases should be permissible under special regulations;

(4) there should be provision in the Constitution prohibiting the transfer of land from aboriginals to non-aboriginals except with the sanction of an authorised officer;

(5) the powers of Supurdars in the Dudhi area of Mirzapur District to allot wastelands and accept surrender of land should be withdrawn and in Jaunsar-Bawar the system of Sayanas should be abolished and the Sayanas replaced by Government employees;

(6) the U. P. Government should report to the Central Government annually or as may be required by the Central Government regarding the administration of this area and abide by its directive;

(7) there shall be one seat reserved in the Provincial Assembly for a tribal from the area of the Mirzapur District which is now partially excluded.

EAST PUNJAB

4. The disturbed conditions in the East Punjab have prevented the appearance of witnesses from Spiti and Lahoul before us and it is equally not possible for us to visit the area. It is unlikely that settled conditions will prevail in the Punjab before the passes are blocked and we do not propose therefore to postpone our recommendations which will now be based on the factual memorandum sent by the Provincial Government.

We consider that constitutional provisions should be made as follows:—

(a) An Advisory Committee of which at least 2/3 shall be local residents shall be set up to advise the Provincial Government regarding the administration of Lahoul and Spiti.

(b) The Provincial Government may declare any law passed by the Federal or Provincial Legislature as not applicable to the tracts or applicable with specified modifications.

(c) The Provincial Government may make special regulations for the administration of criminal and civil law and the protection or rights of local Tibetan inhabitants in land.

(d) The Provincial Government shall report to the Central Government annually or as may be required by the Central Government regarding the administration of this area and abide by its directive.

(e) We confirm the recommendation made in paragraph 9 of the Interim Report that there should be a representative for Lahoul and Spiti in the Provincial Legislature.

5. **Central Department.**—After surveying the position in all the provinces, we have been forced to the conclusion that unless there is a separate department of the Federal Government prescribed by Statute to supervise and which the development of the scheduled areas and the tribals in the different provinces and to furnish such advice and guidance as may be needed, the pace of progress of the tribes will not be sufficiently swift. The Central Government have already recognised the need for a Directorate of Anthropological Survey and we recommend that provision for a Central Department of Tribal Welfare should be made in the Constitution.

6. **Recruitment to Armed Forces.**—We are also of the view that special attention should be paid to the recruitment of the tribes to the armed forces of India. The tribes people can in our opinion furnish valuable material for this purpose as experience in the last war goes to show.

7. **Village and Tribal Headmen.**—During the course of our enquiry many complaints of oppression and mishandling of the tribes people by the hereditary chiefs or heads of villages like the Mustadars Bissois and Paros and Muthadars of South Orissa, the Parganaits and Pradhans of the Santal Parganas and the Mankis and Mundas of Singhbhum have reached us. We are of the view that a general review of the powers and functions of such village or tribal heads should be undertaken by Provincial Governments with a view to removing the grievances of the tribal villagers, the abolition of powers which are exercised in an oppressive manner and the general reform of these ancient systems.

8. **Non-official welfare organisations.**—We recommend that the Provincial Governments should utilise the services of approved non-official organisations which are at present doing welfare work in the provinces for the tribals or which may hereafter come into existence by giving them grants-in-aid with a view to supplementing the volume of development work.

9. **Officials to learn tribal languages.**—We have found that officials posted to aboriginal areas rarely know the local language. This obviously does not conduce to satisfactory administration and we are of the view that it should be made compulsory for officials posted to the aboriginal areas to obtain a working knowledge of the language within a reasonable period. Proficiency in these languages or dialects should be encouraged by the grant of suitable awards.

Yours truly,

A. V. THAKKAR,

Chairman,

Excluded & Partially Excluded Areas.

(other than Assam) Sub-Committee.

Members—

RAJ KRUSHNA BOSE,

PHUL BHAN SHAH (Subject to Minute of Dissent).

JAIPAL SINGH.

The percentage of Tribal population on to the total population in 6 Districts of Bihar and of the Christian population to that of the Tribal population.

Name of District	Total Population	Tribal Population	Percent-age	Christian Tribal Popula-tion	Percent-age
1. Santhal Parganas	22,34,500	11,29,885	50.5	23,205	2.05
2. Hazaribagh	17,51,300	4,78,253	27.8	2,593	0.54
3. Ranchi	16,75,400	11,73,142	70.0	2,85,200	24.31
4. Palamau	9,12,700	3,23,106	35.4	10,786	3.34
5. Manbhum	20,32,100	6,78,126	33.3	1,354	0.19
6. Singhbhum	11,44,700	6,68,597	58.4	17,775	2.65
TOTAL	97,50,700	44,51,109	45.65	3,40,913	7.66

MINUTE OF DISSENT

I submitted a dissenting minute against the provisional report which had included recommendations for those tribal areas also which had then not been visited. After the visit of the Sub-Committee to these areas, I am more than confirmed in my opinion that all the six districts of the Chhota Nagpur Plateau, namely, Manbhum, Singhbhum, Palamau, Hazaribagh, Ranchi and the Santhal Parganas, should remain "Scheduled Areas". All the witnesses were emphatic that the Chhota Nagpur Division as a whole should be scheduled and no district or territory should be excluded from the scheduled status. Even Dr. Sachchidananda Sinha, whose Memorandum has received such attention from the other members of the Sub-Committee, has admitted that for administrative reasons all the six districts should be scheduled. I have other reasons also for the same insistence but the most vital one is the necessity of protecting 1,479,485 Adibasis of the districts of Manbhum, Hazaribagh and Palamau with the veto of the Tribes Advisory Council. This 1941 Census figure is large enough to justify the claim that 15 lakhs of Adibasis should not be exposed to the dangers of General Administration.

Partially Excluded Areas in Mirzapur District.—The tribal tract in Mirzapur district should be transferred to the Scheduled Area of the Chhota Nagpur Plateau. Administratively as well as geographically, the Bihar Government would be in a better position to manage this far-off corner of the United Provinces.

Chittagong Hill Tracts.—The Indian Government must claim back the Chittagong Hill Tracts. The Radcliffe Award must be altered in regard to them.

JAIPAL SINGH.

Sept. 25th, 1947.

Note by Chairman on Minute of Dissent by Shri Jaipal Singh

I do not think that any witnesses whom the Committee examined were explained our proposal that was under contemplation by the Committee about "Scheduling" of certain areas in some provinces. "Scheduling" has a certain special meaning which was not explained to nor known by witnesses at all, not even to Dr. Sachchidananda Sinha. Therefore they could not distinguish between "Schedule and non-schedule" areas in which Tribes reside. Therefore the statement that, all the witnesses were emphatic that the Chhota Nagpur Division as a whole should be scheduled and that no District or territory should be excluded from the "Scheduled States" is incorrect, at any rate, very highly exaggerated.

The Tribal people in Manbhum District form only 33.3 per cent. of the total population. In Hazaribagh 27.8 is the similar percentage. The Latehar Sub-Division of the Palamau District has been recommended by the Sub-Committee as "Schedule". But in the Sadar Sub-Division the percentage is only 26.0. Moreover there are very small compact areas in the two districts mentioned above and in the Sadar Sub-Division of Palamau District which have a Tribal population of more than 40 per cent of the total population, the tribal people have assimilated themselves with the rest of the population so as to be indistinguishable in those areas. It is not therefore necessary to "schedule" the districts of Manbhum and Hazaribagh and the Sadar Sub-Division of Palamau District for the small percentage of the Tribal people who are dispersed among the rest of the population, and thus to brand these $2^{2}/_{2}$ districts as backward.

As has already been shown in the body of the report the area of Dudhi Tehsil and parts of Robertsganj are too small to be made a Scheduled Area. It is a very fantastic

proposal to detach this area from the United Provinces and to tag it on to Bihar Province. It requires no argument to say that this proposal can form no part of this Committee's proposal.

Chittagong Hill Tracts is a purely 97 per cent Buddhistic or non-Muslim area and this Committee would have been too glad, had it formed a part of West Bengal but as the Boundary Commission gave its decision to the contrary and it was accepted by both the Dominions of India and Pakistan. The Committee has been very sorry to know this decision but the award of the Boundary Commission is unalterable.

A. V. THAKKAR,
Delhi, 25th Sept. 1947. Chairman.

MINUTE OF DISSENT

The Sub-Committee submitted a provisional report prior to visiting Bihar. While submitting that report, I raised a question to the effect that all districts of Chhota Nagpur Division and Santhal Pargana should be included as Scheduled Areas. During Bihar tour evidence adduced before the Sub-Committee strongly confirmed my contention that the aforesaid areas deserve to be included as Scheduled Areas. The evidence including that of Dr. Sachchidananda Sinha strongly support this contention. Inclusion of the aforesaid tracts as Scheduled Areas is strongly warranted.

D. N. SAMANTA

The 13th October, 1947.

[Annexure VIII]

APPENDIX D

INTERIM REPORT OF THE EXCLUDED AND PARTIALLY EXCLUDED AREAS (OTHER THAN ASSAM) SUB-COMMITTEE

Summary of Recommendations

1. Tribes who live in the non-excluded areas are part of the problem and the tribes as a whole should be treated as a minority. Tribals should have reserved seats in a joint electorate based on adult franchise in proportion to their population. One representative each is recommended for the Laccadive, Amindivi and Minicoy islands respectively in the Madras Legislature and one for the Lahaul and Spiti Waziris in the East Punjab Legislature [Para. *9 and Sections A and B (1) of Appendix C]

2. It will be necessary to provide for the exclusion of unsuitable legislation in such matters as land, village management and social customs in certain areas inhabited predominantly or to an appreciable extent by tribals. These areas will be known as Scheduled Areas (Para. *10).

3. Legislation in such matters as land and social customs should not be applied to Scheduled Areas if the tribes Advisory Council advises to the contrary (Paras. *11 and 12 and Section E of Appendix C).

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* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

4. Simplified procedure should be continued for the disposal of petty criminal and civil cases (Para. *13 and Section M).

5. Seats should be reserved in the Federal Legislature on the basis of the tribal population of the province. A Tribal Advisory Council should be set up with a minimum of ten and a maximum of 25 members in Madras, Bombay, Bengal, Bihar, C. P. and Orissa (Para. *15 and Section J of Appendix C).

6. There should be provision for the Federal Government to institute a special commission to enquire into the progress of plans of development and also into the conditions of the Scheduled Areas and tribals in general [Para. *16 and Section K (1) of Appendix C].

7. It will be necessary for the Central Government to come to the assistance of Provincial Governments for the execution of schemes of development by providing the necessary funds. The Central Government should also be in a position to require the Provincial Governments to draw up schemes for the Scheduled Areas [Para. *17 and Sections I and K (2) of Appendix C].

8. The revenues derived from and the expenses incurred on the Scheduled Areas from the provincial budget should be shown separately in the annual financial statement of the province (Para. *18 and Section H of Appendix C).

9. It should be the Governor's responsibility to see that schemes of development are drawn up and implemented. (Para. *19).

10. There should be a separate Minister for Tribal Welfare in C. P. Orissa and Bihar, and provision for this should be contained in the statute (Para. *20 and Section L of Appendix C).

11. There should be a due proportion of aboriginals recruited into the various Government Services. A separate service is not recommended but non-tribal officials posted to the Scheduled Areas should be selected with care. (Para.*21).

12. Tribal panchayats should be encouraged wherever possible (Para. *22).

13. Shifting cultivation should be discouraged (Para.*23).

14. Temperance propaganda should be carried on as part of tribal welfare work (Para *24).

15. The alienation of land belonging to tribals to non-tribals should be prohibited. Allotment of new land in Scheduled Areas should not be made to non-aboriginals except in exceptional cases (Para. *25 and Section F of Appendix C).

16. There should be provision for control of money-lenders by a system of licensing (Para. *26 and Section G of Appendix C).

Sambalpur, Angul and Darjeeling and certain areas in Bombay need not be treated as Scheduled Areas. In Bihar the three districts of Ranchi, Singhbhum, and Santal Parganas only where the tribes are in a majority are included in the Schedule provisionally. The U. P. and Punjab areas are not included (Para. *27 and Schedule B of Appendix C).

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* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

[Annexure IX]

APPENDIX D

Schedule A

PART I — MADRAS

1. Bagata.
2. Bottadas — Bodo Bhottada, Muria Bhottada and Sano Bhottada.
3. Bhumias — Bhuri Bhumia and Bodo Bhumia.
4. Bissoy — Bharangi Jodia, Bennangi Daduva, Frangi, Hollar, Jhoria, Kollai, Konde, Paranga, Penga Jodia, Sodo Jodia and Takora.
5. Dhakkada.
6. Domb — Andhiya Dombs, Audiniya Dombs, Chonel Dombs, Christian Dombs, Mirgani Dombs, Oriya Dombs, Ponaka Dombs, Telag and Ummia.
7. Gadabas — Boda Gadaba, Cerlam Gadaba, Fanji Gadaba, Jodia Gadaba, Olaro Gadaba, Pangi Gadaba and Paranga Gadaba.
8. Ghasis — Boda Ghasis and San Ghasis.
9. Gondi — Modya Gond and Rajo Gond.
10. Goundus — Bato, Bhirithya, Dudhokouria, Hato, Jatako and Joria.
11. Kosalya Goudus — Bosothoriya Goudus, Chitti Goudus, Dangayath Goudus, Doddu Kamariya, Dudu Kamaro, Ladiya Goudus and Pullosoriay Goudus.
12. Magatha Goudus — Bernia Goudu, Boodo Magatha, Dongayath Goudu Ladya Goudu, Ponna Magatha and Sana Magatha.
13. Serithi Goudus.
14. Holva.
15. Jadapus.
16. Jataus.
17. Kammaras.
18. Khattis — Khatti, Kammaro and Lohara.
19. Kodu.
20. Kommar.
21. Konda Dhoras.
22. Konda Kapus.
23. Kondareddis.
24. Kondhs — Desaya Kondhs, Dongria Kondhs, Kuttiya Kondhs, Tikiria Kondhs and Yenity Kondhs.
25. Kotia — Bartikar, Bentho Oriya, Dhulia or Dulia, Holva Paiko, Putiay, Sanrona and Sidho Paiko.
26. Koya or Gound with its sub-sects, Raja of Rasha Koyas, Lingadhari Koyas, Koyas (ordinary) and Kottu Koyas.
27. Madigas.
28. Malas or Agency Malas or Valmikies.
29. Malis — Worchia Malis, Paiko Malis and Pedda Malis.

30. Maune.
31. Manna Dhora.
32. Mukha Dhora—Nooka Dhora.
33. Muli or Muliya.
34. Muria.
35. Ojulus or Metta Komsalies.
36. Omanaito.
37. Paigarapu.
38. Palasi.
39. Pali.
40. Pentias.
41. Porjas—Bodo, Bonda, Daruva, Didua, Jodia, Mundili, Pengu Pydi and Saliya.
42. Reddi or Dhoras.
43. Relli or Sachandi.
44. Ronas.
45. Savaras—Kapu Savaras, Khutto Savaras and Maliya Savaras.
46. The inhabitants of the Laccadive, Minicoy and Amindivi Islands.

PART II—BOMBAY

1. Barda.
2. Bavacha.
3. Bhil.
4. Chodhra.
5. Dhanka.
6. Dhodia.
7. Dublia.
8. Gamit or Gamta.
9. Gond.
10. Kathodi or Katkari.
11. Konkna.
12. Koli Mahadeb.
13. Mavchi.
14. Naikda or Nayak.
15. Pardhi, including Advichincher or Phanse Pardhi.
16. Patenaa.
17. Pomla.
18. Powara.
19. Rathawa.
20. Tadvi Bhill.
21. Thakur.
22. Valvai.
23. Varli.
24. Vasava.

PART III—BIHAR

(*a*) A resident of the province belonging to any of the following tribes: —

1. Asur.
2. Bajra.
3. Bathudi.
4. Bentkar.
5. Binjhia.
6. Birhor.
7. Birjia.
8. Chero.
9. Chik Baraik.
10. Gadaba.
11. Ghatwar.
12. Gond.
13. Gorait.
14. Ho.
15. Juang.
16. Karmali.
17. Kharia.
18. Kharwar.
19. Khetauri.
20. Khond.
21. Kisan
22. Koli.
23. Kora.
24. Korwa.
25. Mahli.
26. Mal Paharia.
27. Munda.
28. Oraon.
29. Parhiya.
30. Santal.
31. Sauria Paharia.
32. Savar.
33. Tharu.

(b) a resident in any of the following districts or police stations, that is to say, the districts of Ranchi, Singhbhum, Hazaribagh and the Santal Parganas, and the police stations of Arsha, Balarampur, Jhalda, Jaipur, Baghmundi, Chandil, Ichagarh, Barahabhum, Patamda Banduan and Manbazar in the district of Manbhum, belonging to any of the following tribes:—

1. Bauri.
2. Bhagta.
3. Bhuiya.
4. Bhumij.
5. Ghasi.
6. Pan.
7. Rajwar.
8. Turi.

(c) a resident in the Dhanbad Sub-Division or any of the following police stations in the Manbhum District, that is to say, Purulia, Hura, Pancha, Raghunathpur, Santuri, Nituria, Para, Chas, Chandan-Kiari and Khasipur belonging to the Bhumij tribe.

PART IV—CENTRAL PROVINCES

1. Gond.
2. Kawar.
3. Maria.
4. Muria.
5. Halba.
6. Pardhan.
7. Oraon.
8. Bimjhwar.
9. Andh.
10. Bharia-Bhumia.
11. Koti.
12. Bhattra.
13. Baiga.
14. Kolan.
15. Bhil.
16. Bhuinhar.
17. Dhanwar.
18. Bhaina.
19. Parja.
20. Kamar.
21. Bhunjia.
22. Nagarchi.
23. Ojha.
24. Korku.
25. Kol.
26. Nagasia.
27. Sawara.
28. Korwa.
29. Majhwar.
30. Kharia.
31. Saunta.
32. Kondh.
33. Nihal.
34. Birhaul (or Birhor).
35. Rautia.
36. Pando.

PART V—ORISSA

(a) A resident of the province belonging to any of the following tribes:

1. Bagata.
2. Banjari.
3. Chenchu.
4. Gadaba.
5. Gond.
6. Jatapu.
7. Khand (Kond).
8. Konda-Dora.
9. Koya.
10. Paroja.
11. Saora (Savar).
12. Oraon.
13. Santal.
14. Kharia.
15. Munda.
16. Banjara.
17. Binjhia.
18. Kisan.
19. Koli.
20. Kora.

(b) a resident of any of the following areas, that is to say, the Koraput and Khondmals Districts and the Ganjam Agency belonging to either of the following tribes:—

1. Dom or Dombo.
2. Pan or Pano.

(c) a resident of the Sambalpur District belonging to any of the following tribes:—

1. Bauri.
3. Bhumij.
5. Turi.

2. Bhuiya. 4. Ghasi. 6. Pan or Pano.

PART VI—BENGAL

1. Botia.
2. Chakma.
3. Kuki.
4. Lepcha.
5. Munda.
6. Magh.
7. Mro.
8. Oraon.
9. Santal.
10. Tippera.
11. Any other tribe notified by the Provincial Govt.

PART VII—UNITED PROVINCES

1. Bhuinya.
2. Baiswar.
3. Baiga.
4. Gond.
5. Kharwar.
6. Kol.
7. Ojha.
8. Any other tribe notified by the Provincial Govt.

Schedule B

MADRAS

The Laccadive Islands (including Minicoy) and the Amindivi Islands.

The East Godavari Agency and so much of the Vizagapatam Agency as is not transferred to Orissa under the provisions of the Government of India (Constitution of Orissa) Order, 1936.

BENGAL

The Chittagong Hill Tracts.

BOMBAY

In the West Khandesh District:—The Navapur Petha, the Akrani Mahal and the villages belonging to the following Mehwassi Chiefs: (1) the Parvi of Kathi, (2) the Parvi of Nal, (3) the Parvi of Singpur, (4) the Walwi of Gaohali, (5) the Wassawa of Chikhli and (6) the Parvi of Navalpur.

In the East Khandesh District:—The Satpura Hills Reserved Forest Areas.

In the Nasik District:—The Kalvan Taluk and Peint Peth.

In the Thana District:—The Dahanu and Shahpur Talukas and Mokhala and Umbergaon Pethas.

BIHAR

The Ranchi and Singhbhum districts and the Latehar Sub-division of the Palamau district of the Chhota Nagpur Division.

The Santal Paraganas District, excluding the Godda and Deogarh Sub-divisions.

THE CENTRAL PROVINCES AND BERAR

In the Chanda District, the Ahiri Zamindari in the Sironcha Tahsil and the Dhanora, Dudmala, Gewardha, Jharapapra, Khutgaon, Kotgal, Muramgaon, Palasgarh, Rangi, Sirsundi, Sonsari, Chandala, Gilgaon, Pai-Muranda and Potegaon Zamindaris in the Garchiroli Tahsil.

The Harrai, Gorakghat, Gorpani, Batkagarh, Bardagarh, Partabgarh (Pagara), Almod and Sonpur Jagirs of the Chhindwara District, and the portion of the Pachmarhi jagir in the Chhindwara District.

The Mandla District.

The Pendra, Kenda, Matin, Lapha, Uprora, Chhuri and Korba Zamindaris of the Bilaspur District.

The Aundhi, Koracha, Panabar as and Ambagarh Chauki Zamindaris of the Drug District.

The Baihar Tahsil of the Balaghat District.

The Melghat Taluk of the Amraoti District.

The Bhainsdehi Tahsil of the Betul District.

ORISSA

The Ganjam Agency Tracts including Khondmals.

The Koraput District.

MINUTE OF DISSENT

Scheduled Areas

I regret I must submit a minute of dissent in regard to the "Scheduled areas" for the Chhota Nagpur Plateau. I cannot agree to the elimination of the Districts of Manbhum, Hazaribagh and Palamau which, even according to the unreliable 1941 Census, contain 678, 126, 478, 253 and 323,106 Adibasis respectively, that is, a total of 1,479,485 Adibasis for the three Districts. I cannot see how I can agree to the demolition of the economic, geographical and ethnic unity and entity of the Chhota Nagpur Division. It is not right that we should give an *ex parte* verdict and change the *status quo* of these three Districts.

JAIPAL SINGH

The 19*th August* 1947

[Annexure X]

APPENDIX D

Joint Report of the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee and the North East Frontier (Assam) Tribal and Excluded Areas Sub-Committee of the Advisory Committee.

In accordance with the ruling of the Chairman, Advisory Committee, we have held a joint meeting of our two sub-committees. Separate reports have already been submitted by us which in the case of the Assam Sub-Committee contains final recommendations, and in the case of the other Sub-Committee is final for the Provinces of Madras, Bombay, Bengal, the Central Provinces and Orissa, and is provisional for Bihar, the United Provinces and the Punjab which have yet to be visited or in respect of which witnesses are yet to be examined. The report of the latter Sub-Committee contains however the framework of the proposals likely to be adopted finally. Although that report is not final for all Provinces, this joint report is being submitted so that the recommendations could be taken into consideration by the Advisory Committee, if this is necessary, before the final report is available towards the end of September. We would further point out that the position of the excluded and partially excluded areas has undergone a change with the coming into operation of the Indian Independence Act and the adapted Constitution of 1935. Under the Indian Independence Act so much of the provisions of the Government of India Act, 1935 as requires a Governor to act in his discretion or exercise his individual judgment ceases to have effect from the 15th of August. The partially excluded areas are represented in the legislatures, however inadequately, but in the case of the excluded areas the change implies that they are brought under the jurisdiction of the Ministry without representation in the legislature. Taking into account the past history of these tracts, the needs and susceptibilities, of the people and other factors, it appears desirable that the Provincial Governments should at least be aware of our recommendations as soon as possible so that their policy may be guided thereby even if other steps are not found necessary in the Constituent Assembly for their implementation at an early date. We recommend that Provincial Governments should be advised to take such action as the establishment of District Councils and Tribal Advisory Councils as may be possible immediately to give effect to the policy recommended by us and to make such statutory regulations for this purpose as may be necessary.

2. Coming to the actual recommendations made by the two Sub-Committees, we are of the view that although certain features are common to all these areas, yet the circumstances of the Assam Hill Districts are so different that radically different proposals have to be made for the areas of this Province. The distinguishing feature of the Assam Hills and Frontier Tracts is the fact that they are divided into fairly large districts inhabited by single tribes or fairly homogenous groups of tribes with highly democratic and mutually exclusive tribal organisation and with very little of the plains leaven which is so common a feature of the corresponding areas, particularly the partially excluded areas of other Provinces. The Assam Hill Districts contain as a rule, upwards of 90 per cent of tribal population whereas, unless we isolate small areas, this is generally not the case in the other Provinces. The tribal population in the other Provinces has moreover assimilated to a considerable extent the life and ways of the plains people and tribal organisations have in many places completely disintegrated. Another feature is that some of the areas in Assam like the Khasi Hills or the Lushai Hills, show greater potentialities for quick progress than tribes in the other Provinces. They may also be distinguished by their greater eagerness for reform in which

they have a dominant share than the apathy shown by the tribals of some other Provinces. Having been excluded totally from ministerial jurisdiction and secluded also from the rest of the Province by the Inner Line system, a parallel to which is not to be found in any other part of India, the excluded areas have been mostly anthropological specimens; and these circumstances together with the policy of officials who have hitherto been in charge of the tracts have produced an atmosphere which is not to be found elsewhere. It is in these conditions that proposals have been made for the establishment of special local councils which in their separate hill domains will carry on the administration of tribal law and control the utilisation of the village land and forest. As regards the features common to tribal areas in other Provinces, the Assam hill man is as much in need of protection for his land as his brother in other Provinces. He shares the backwardness of his tract and in some parts the degree of illiteracy and lack of facilities for education, medical aid and communications. Provision is necessary for the development of the hill tracts in all these matters and we have found it necessary to recommend constitutional safeguards of various kinds.

3. The differences between Assam and other areas as well as certain common features have been indicated above. While in Assam the Hill Districts present features of their own and the Assam Sub-Committee have confined their recommendations on the whole to these tracts, it has not been possible for the other Sub-Committee to deal with the problems of the tribes in exactly the same manner. The special features of the hills have been mentioned and they distinguish almost to the same degree the tribesmen in the hill and the tribesmen in the plains of Assam as they do the regular plains inhabitants. The total population censussed as tribal in the plains of Assam is about 1:5 million out of which possibly some 50 per cent. consists of tea-garden labour, drawn in part from other provinces. This portion of the plains tribals is of course a population which has assimilated in high degree the life of the plains. The stable population of plains tribals is more or less in the same position. As regards other Provinces, the degree of assimilation is on the whole greater whether the tribesman is found in the hills or in the more accessible parts although some of the small tribes in the Agency Tracts of Orissa and Madras have hardly come into contact with the plains. In any case their outlook is totally different. From the very manner in which partially excluded areas have been formed it has not been possible to include large numbers of tribals who are scattered about in the Provinces irrespective of whether their condition was advanced or otherwise. It has been necessary therefore to treat all persons of tribal origin as a single minority and not separately as in the case of Assam. In this method of treatment therefore the recommendations for other Provinces differ radically from the proposals for Assam. The excluded and partially excluded areas however contain considerable concentrations of tribes people and generally they are in hilly and comparatively inaccessible areas with no communications and facilities for the development of the population. Land for them also is a vital factor and protection of the tribals' land is an essential need. The financial requirements of the Scheduled Areas are considerable, and the Centre will have to come to the assistance of certain Provinces at any rate. Thus the essential features of the proposals for the tribals of Provinces other than Assam are proportionate representation for the tribals as a whole in the Legislature, the scheduling of certain areas as in need of special attention and in which the protection of land and the social organisation of the tribals is an indispensable need. To facilitate the proper administration of the tribes, a Tribes Advisory Council with statutory functions is recommended for the Provinces of Madras, Bombay, the Central Provinces, Bihar, West Bengal and Orissa, and the application of provincial legislation to the Scheduled Areas is linked up with this Advisory Council.

4. The common proposals for Assam and other Provinces is that of provision of funds by the Centre and a separate financial statement in the budget for the Hill Districts (Assam) and the Scheduled Areas (other Provinces). The inclusion of provisions for the control of moneylenders is another common feature.

5. We have attached copies of the Appendices* to the separate reports which indicate the legal provisions necessary and a summary† of the recommendations of both the Sub-Committees.

6. We recommended that the plains tribals of Assam†† should be recognised as a minority and should be entitled to all the privileges of a minority including representation in the legislatures in proportion to population and in the services; and that their land should be protected.

7. Subject therefore to the special provisions for the representation of the Hill Districts of Assam, all tribals should be recognised as a minority for the purposes of representation in the legislatures and in the services.

G. N. BARDOLOI, Chairman,
N. E. F. (Assam)
Tribal & Excluded Areas
Sub-Committee.

A. V. THAKKAR, Chairman,
Excluded & Partially
Excluded Areas (Other
than Assam)
Sub-Committee.

Dated New Delhi, the 25th August 1947.

[Annexure XI]

APPENDIX D

Appendix A to Part I of North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee Report

A. (1) The areas included in Schedule A to this part shall be autonomous districts.

(2) An autonomous district may be divided into autonomous regions.

(3) Subject to the provisions of Section P the Government of Assam may from time to time notify any area not included in the said schedule as an autonomous district or as included in an autonomous district and the provisions of this Part shall thereupon apply to such area as if it was included in the said schedule.

(4) Except in pursuance of a resolution passed by the District Council of an autonomous district in this behalf the Government of Assam shall not notify any district specified or deemed to be specified in the schedule or part of such district, as ceasing to be an autonomous district or a part thereof.

B. (1) There shall be a District Council for each of the areas specified in schedule A. The Council shall have not less than twenty nor more than forty members, of whom not less than three-fourths shall be elected by universal adult franchise.

Note.—If adult franchise is not universally adopted this provision will have to be altered.

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* For the relevant Appendices of the Report of the Excluded and Partially Excluded Areas (other than Assam) Sub-Committee, See pages 33-34 of the original reports.

†See page 63 of the original report.

††This means that Tea-garden labour and *ex* tea-garden labour which consists of tribals from provinces other than Assam are excluded.

(2) The constituencies for the elections to the District Council shall be so constituted if practicable that the different tribals or non-tribals, if any, inhabiting the area shall elect a representative from among their own tribe or group:

Provided that no constituency shall be formed with a total population of less than 500.

(3) If there are different tribes inhabiting distinct areas within an autonomous district, there shall be a separate Regional Council for each such area or group of areas that may so desire.

(4) The District Council in an autonomous district with Regional Councils shall have such powers as may be delegated by the Regional Councils in addition to the powers conferred by this constitution.

(5) The District or the Regional Council may frame rules regarding (a) the conduct of future elections, the composition of the Council, the office bearers who may be appointed, the manner of their election and other incidental matters, (b) the conduct of business, (c) the appointment of staff, (d) the formation and functioning of subordinate local councils or boards, (e) generally all matters pertaining to the administration of subjects entrusted to it or falling within its powers:

Provided that the Deputy Commissioner or the Sub-divisional officer as the case may be of the Mikir and the North Cachar Hills shall be the Chairman *ex-officio* of the District Council and shall have powers for a period of six years after the constitution of the Council, subject to the control of the Government of Assam, to annul or modify any resolution or decision of the District Council or to issue such instructions as he may consider appropriate.

C. (1) The Regional Council, or if there is no Regional Council, the District Council, shall have power to make laws for the area under its jurisdiction regarding (a) allotment, occupation or use for agricultural, residential or other non-agricultural purposes or setting apart for grazing, cultivation, residential or other purposes ancillary to the life of the village or town, of land other than land classed as reserved forest under the Assam Forest Regulation, 1891 or other law on the subject applicable to the district:

Provided that land required by the Government of Assam for public purposes shall be allotted free of cost if vacant, or if occupied, on payment of due compensation in accordance with the law relating to the acquisition of land; (b) the management of any forest which is not a reserve forest; (c) the use of canal or water courses for the purposes of agriculture; (d) controlling, prohibiting or permitting the practice of jhum or other forms of shifting cultivation; (e) the establishment of village or town committees and councils and their powers; (f) all other matters relating to village or town management, sanitation, watch and ward.

(2) The Regional Council or if there is no Regional Council, the District Council shall also have powers to make laws regulating (a) the appointment or succession of chiefs or headmen; (b) inheritance of property; (c) marriage and all other social customs.

D. (1) Save as provided in Section F the Regional Council, or if there is no Regional Council, the District Council, or a court constituted by it in this behalf shall have all the powers of a final court of appeal in respect of cases or suits between parties, all of whom belong to hill tribes, in its jurisdiction.

(2) The Regional Council, or if there is no Regional Council the District Council may set up village Councils or Courts for the hearing and disposal of disputes or cases other than cases triable under the provisions of Section

F, or cases arising out of laws passed by it in the exercise of its powers, and may also appoint such officials as may be necessary for the administration of its laws.

E. The District Council of an autonomous district shall have the powers to establish or manage primary schools, dispensaries, markets, cattle pounds, ferries, fisheries, roads and waterways and in particular may prescribe the language and manner in which primary education shall be imparted.

F. (1) For the trial of acts which constitute offences punishable with imprisonment for five years or more or with death, or transportation for life under the Indian Penal Code or other law applicable to the district or of suits arising out of special laws or in which one or more of the parties are non-tribals, the Government of Assam may confer such powers under the Criminal Procedure Code or Civil Procedure Code as the case may be on the Regional Council the District Council or Courts constituted by them or an officer appointed by the Government of Assam as it deems appropriate and such courts shall try the offences or suits in accordance with the Code of Criminal Procedure or Civil Procedure as the case may be.

(2) The Government of Assam may withdraw or modify powers conferred on the Regional Council or District Council or any court or officer under this section.

(3) Save as provided in this section the Criminal Procedure Code and the Civil Procedure Code shall not apply to the autonomous district.

Note.—"Special Laws"—Laws of the type of the law of contract, company law or insurance etc. are contemplated.

G. (1) There shall be constituted a District or Regional Fund into which shall be credited all moneys received by the District Council or Regional Council as the case may be in the course of its administration or in the discharge of its responsibilities.

(2) Rules approved by the Comptroller of Assam shall be made for the management of the Fund by the District or Regional Council and management of the Fund shall be subject to these rules.

H. (1) A Regional Council, or if there is no Regional Council the District Council shall have the following powers of taxation:

(a) subject to the general principles of assessment approved in this behalf for the rest of Assam, land revenue (b) poll tax or house tax.

(2) The District Council shall have powers to impose the following taxes, that is to say (a) a tax on professions, trades or calling, (b) a tax on animals, vehicles, (c) toll tax, (d) market dues, (e) ferry dues, (f) cesses for the maintenance of schools, dispensaries or roads.

(3) A Regional Council or District Council may make rules for the imposition and recovery of the taxes within its financial powers.

I. (1) The Government of Assam shall not grant any licence or lease to prospect for or extract minerals within an autonomous district save in consultation with the District Council.

(2) Such share of the royalties accruing from licences or leases for minerals as may be agreed upon shall be made over to the District Council. In default of agreement such share as may be determined by the Governor in his discretion shall be paid.

J. (1) The District Council may for the purpose of regulating the profession of money lending, or trading by non-tribals in a manner detrimental to the interests of the tribals make rules applicable to the district or any portion of it: (a) prescribing that except the holder of a licence issued by

the Council in this behalf no person shall carry on money lending, (b) prescribing the maximum rate of interest which may be levied by a moneylender, (c) providing for the maintenance of accounts and for their inspection by its officials, (d) prescribing that no non-tribal shall carry on wholesale or retail business in any commodity except under a licence issued by the District Council in this behalf:

Provided that no such rules may be made unless the District Council approves of the rules by a majority of not less than three fourths of its members:

Provided further that a licence shall not be refused to moneylenders and dealers carrying on business at the time of making of the rules.

K. (1) The number of members representing an autonomous district in the Provincial Legislature shall bear at least the same proportion to the population of the district as the total number of members in that Legislature bears to the total population of Assam.

(2) The total number of representatives allotted to the autonomous districts which may at any time be specified in Schedule A in accordance with Sub-section (1) of this Section shall not be taken into account in reckoning the total number of representatives to be allotted to the rest of the Province under the provisions of Section .....of the Provincial Constitution.

(3) No constituencies shall be formed for the purpose of election to the Provincial Legislature which include portions of other autonomous districts or other areas, nor shall any non-tribal be eligible for election except in the constituency which includes the Cantonment and Municipality of Shillong.

L. (1) Legislation passed by the provincial legislature in respect of (a) any of the subjects specified in section C or (b) prohibiting or restricting the consumption of any non-distilled alcoholic liquor, shall not apply to an autonomous district.

(2) A Regional Council of an autonomous district or if there is no Regional Council, the District Council may apply any such law to the area under its jurisdiction, with or without modification.

M. The revenue and expenditure pertaining to an autonomous district which is credited to or met from the funds of the Government of Assam shall be shown separately in the annual financial statement of the Province of Assam.

N. There shall be paid out of the revenues of the Federation to the Government of Assam such capital and recurring sums as may be necessary to enable that Government— (a) to meet the average excess of expenditure over the revenue during the three years immediately preceding the commencement of this constitution in respect of the administration of the areas specified in Schedule A; and (b) to meet the cost of such schemes of development as may be undertaken by the Government with the approval of the Federal Government for the purpose of raising the level of administrations of the aforesaid areas to that of the rest of the province.

O. (1) The Governor of Assam may at any time institute a commission specifically to examine and report on any matter relating to the administration or, generally at such intervals as he may prescribe, on the administration of the autonomous districts generally and in particular on (a) the provision of educational and medical facilities and communications (b) the need for any new or special legislation and (c) the administration of the District or Regional Councils and the laws or rules made by them.

(2) The report of such a commission with the recommendations of the Governor shall be placed before the provincial legislature by the Minister concerned with an explanatory memorandum regarding the action taken or proposed to be taken on it.

(3) The Governor may appoint a special Minister for the autonomous Districts.

P. (1) The Government of Assam may, with the approval of the Federal Government, by notification make the foregoing provisions or any of them applicable to any area specified in Schedule B to this Part, or to a part thereof; and may also, with the approval of the Federal Government, exclude any such area or part thereof from the said Schedule.

(2) Till a notification is issued under this section, the administration of any area specified in Schedule B or of any part thereof shall be carried on by the Union Government through the Government of Assam as its agent.

Q. (1) The Governor of Assam in his discretion may, if he is satisfied that any act or resolution of a Regional or District Council is likely to endanger the safety of India, annul or suspend such act or resolution and take such steps as he may consider necessary (including dissolution of the Council and the taking over of its administration) to prevent the commission or continuation of such act or giving effect to such resolution.

(2) The Governor shall place the matter before the legislature as soon as possible and the legislature may confirm or set aside the declaration of the Governor.

R. The Governor of Assam may on the recommendation of a commission set up by him under section N order the dissolution of a Regional or District Council and direct either that fresh election should take place immediately, or with the approval of the legislature of the province, place the administration of the area directly under himself or the commission or other body considered suitable by him, during the interim period or for a period not exceeding twelve months:

Provided that such action shall not be taken without affording an opportunity to the District or Regional Council to be heard by the provincial legislature and shall not be taken if the provincial legislature is opposed to it.

Transitional Provisions

Governor to carry on administration as under the 1935 Act till a Council is set up, he should take action to constitute the first District Council or Regional Councils and frame provisional rules in consultation with existing tribal Councils or other representative organisations, for the conduct of the elections, prescribe who shall be the office bearers etc. The term of the first Council to be one year.

GOPINATH BARDOLOI (Chairman)
J. J. M. NICHOLS-ROY.
RUP NATH BRAHMA.
A. V. THAKKAR.

Schedule B

The Khasi and Jaintia Hills District excluding the town of Shillong.
The Garo Hills District.
The Lushai Hills District.
The Naga Hills District.
The North Cachar Sub-division of the Cachar District.
The Mikir Hills portion of Nowgong and Sibsagar District excepting the mouzas of Barpathar and Sarupathar.

Schedule B

The Sadiya and Balipara Frontier Tracts.

The Tirap Frontier Tract (excluding the Lakhimpur Frontier Tract).

The Naga Tribal Area.

[Annexure XII]

APPENDIX D

SUMMARY OF RECOMMENDATIONS OF THE ASSAM SUB-COMMITTEE

District Councils should be set up in the Hill Districts (see Section B of Appendix A) with powers of legislation over occupation or use of land other than land comprising reserved forest under the Assam Forest Regulation of 1891 or other law applicable. This is subject to the proviso that no payment would be required by the occupation of vacant land by the Provincial Government for public purposes and private land required for public purposes by the Provincial Government will be acquired for it on payment of compensation [Para. *9 — Section C (1) Appendix A.]

2. Reserved forests will be managed by the Provincial Government in questions of actual management including the appointment of forest staff and the granting of contracts and leases, the susceptibilities and the legitimate desires and needs of the Hill People should be taken into accounts [Para. *10].

3. On account of its disastrous effects upon the forest, rainfall and other climatic features, jhuming should be discouraged and stopped wherever possible but the initiative for this should come from the tribes themselves and the control of jhuming should be left to the local councils [Para. *11 and Section C of Appendix A].

4. All social law and custom is left to be controlled or regulated by the tribes. [Para. *12 and Section C (2) of Appendix A]. All criminal offences except those punishable with death, transportation or imprisonment for five years and upwards should be left to be dealt with in accordance with local practice and the Code of Criminal Procedure will not apply to such cases. As regards the serious offences punishable with imprisonment of five years or more they should be tried henceforth regularly under the Criminal Procedure Code. To try such cases, powers should be conferred by the Provincial Government wherever suitable upon tribal councils or courts set up by the district councils themselves.

All ordinary civil suits should be disposed of by tribal courts and local councils may have full powers to deal with them including appeal and revision.

Where non-tribals are involved, civil or criminal cases should be tried under the regular law and the Provincial Government should make suitable arrangements for the expeditious disposal of such cases by employing circuit magistrates or judges. [Para. *12—Section D & F of Appendix A].

5. The District Councils should have powers of management over primary schools, dispensaries and other institutions which normally come under the scope of local self-governing institutions in the plains. They should have full control over primary education. As regards secondary school education, there should be some integration with the general system of the province and it is left open to the provincial Government to entrust local councils with responsibility for secondary schools wherever they find this suitable. [Para. *13 and Section E of Appendix A].

For the Mikir and North Cachar Hills the District or Sub Divisional province and it is left open to the Provincial Government to entrust local councils with powers, subject to the control of the Government of Assam, to modify or annul resolutions or decisions of the local councils and to issue such instructions as may be necessary. [Para. *13 and Section B (5) of Appendix A].

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*References to paras, sections and appendices are to paras, sections and appendices in the original reports.

6. Certain taxes and financial powers should be allocated to the councils. They should have all the powers which local bodies in regulation districts enjoy and in addition they should have powers to impose house tax or poll tax, land revenue and levies arising out of the powers of management of village forest. [Section *H of Appendix A and Para. 14 (a)].

Statutory provision for a fixed proportion of provincial funds to be spent on the hill districts is not considered practicable. A separate financial statement for each hill district showing the revenue derived from the District and the expenditure proposed on it is recommended. The framing of a suitable programme of development should be enjoined either by statute or by Instrument of Instructions. [Section *M of Appendix A and Para. 14 (b)].

It is quite clear that the urgent requirements of the hill districts by way of expenditure on development schemes are beyond the resources of the Provincial Government. The development of the hill districts should be as much the concern of the Federal Government as the Provincial Government. Financial assistance should be provided by the Federation to meet the deficit in the ordinary administration on the basis of the average deficit during the past three years and the cost of development schemes should also be borne by the Central Exchequer [Section *N of Appendix A and Para. 14 (c)].

The claims of the hill district councils for assistance from general provincial revenues to the extent that they are unable to raise the necessary finances within their own powers is recognised [Para. *16 (d)].

7. If local councils decide by a majority of three-fourths of their members to license moneylenders or traders they should have powers to require moneylenders and professional dealers from outside to take out licences. [Para. *15 and Section J of Appendix A].

8. The management of mineral resources should be centralised in the hands of the Provincial Government but the right of the district councils to a fair share of the revenues is recognised. No licence or lease shall be given by the Provincial Government except in consultation with the local Council. If there is no agreement between the provincial Government and the district council regarding the share of the revenue, the Governor will decide the matter in his discretion [Para. *16 and Section I of Appendix A].

9. Provincial legislation which deals with the subjects in which the hill councils have legislative powers will not apply to the hill districts. Legislation prohibiting the consumption of non-distilled liquors like Zu will also not apply; the district council may however apply the legislation [Para. *17 and Section L of Appendix A].

10. It is necessary to provide for the creation of regional councils for the different tribes inhabiting an autonomous district if they so desire. Regional councils have powers limited to their customary law and the management of lands and villages and courts. Regional councils may delegate their powers to the district councils [Para. *18 and Section B (4) of Appendix A].

11. The Governor is empowered to set aside any act or resolution of the council if the safety of the country is prejudiced and to take such action as may be necessary including dissolution of the local councils subject to the approval of the legislature. The Governor is also given powers to dissolve the council if gross mismanagement is reported by a commission [Para. *19 and Section Q and R of Appendix A].

12. The Central Government should continue to administer the Frontier Tracts and Tribal Area with the Government of Assam as its agent until

* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over by the provincial Government with the approval of the Federal Government [Section *P of Appendix A and Para. 20 (a)].

The pace of extending administration should be greatly accelerated and separate officers appointed for the Lohit Valley, the Siang Valley and the Naga Tribal Area [Para. *20(a)].

The Lakhimpur Frontier Tract should be attached to the regular administration of the district. The case of the portion of the Lakhimpur Frontier Tract recently included in the Tirap Frontier Tract should be examined by the provincial Government with a view to a decision whether it could immediately be brought under provincial administration. A similar examination of the position in the plains portions of the Sadiya Frontier Tract is recommended. The portion of the Balipara Frontier Tract around Charduar should also be subject to a similar examination [Para. *20 (b)].

Posa payment should be continued [Para. *20 (c)].

13. The excluded areas other than the Frontier Tracts should be enfranchised immediately and restrictions on the franchise in the Garo and Mikir Hills should be removed and adult franchise introduced [Para. *21 (a) and Section B (1) of Appendix A].

Weightage is not considered necessary but the hill districts should be represented in the provincial legislature in proportion not less than what is due on their population even if this involves a certain weightage in rounding off. The total number of representatives for the hills thus arrived at [*See* Para. *21 (b)] should not be taken into account in determining the number of representatives to the provincial legislature from the rest of Assam [Para. *21 (b) and Section K or Appendix A].

The total population of the hill districts justifies a seat for the hill tribes in the Federal Legislature on the scale proposed in Section 11 (c) of the Draft Union Constitution [Para. *21 (c)].

Joint electorate is recommended but constituencies are confined to the autonomous districts. Reservation of seats, in view of this restriction, is not necessary [Para. *21 (d) and Section K (3) of Appendix A].

Non-tribals should not be eligible for election from hill constituencies except in the constituency which includes the Municipality and Cantonment of Shillong [Para.*21 (e) and Section K (8) of Appendix A].

14. Representation for the hills in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the instrument of Instructions or corresponding provision [Para. *22—*See* also Section O (3) of Appendix A].

15. Non-tribal officials should not be barred from serving in the hills but they should be selected with care if posted to the hills. The appointment of a due proportion of hill people in the services should be particularly kept in mind and provided for in rules or executive instructions of the Provincial Government [Para. *23].

16. A commission may be appointed at any time or permanently to enable the Government to watch the progress of development plans or to examine any particular aspects of the administration [Para. *24 and Section O (i) of Appendix A].

17. Plains tribals number 1.6 million. Their case for special representation and safeguards should be considered by the Minorities Sub-Committee. [Para. *25].

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* References to paras., sections and appendices are to paras., sections and appendices in the original reports.

18. The question of altering boundaries so as to bring the people of the same tribe under a common administration should be considered by the Provincial Government. The Barpathar and Sarupathar Mouzas included in the Mikir Hills should be included in the regularly administered areas henceforth [Para. *26].

19. Non-tribal residents may be provided with representation in the local councils if they are sufficiently numerous. For this purpose non-tribal constituencies may be formed if justified and if the population is not below 500 [Para. *27 and Section B (2) of Appendix A].

20. Provincial councils should be set up by the Governor of Assam after consulting such local organisations as exist. These provisional councils which will be for one year will have powers to frame their own constitution and rules for the future [Para. *29 and Transitional Provisions of Appendix A also].

[Annexure XIII]

APPENDIX D

SCHEDULE 13 TO GOVERNMENT OF INDIA (PROVINCIAL LEGISLATIVE ASSEMBLIES) ORDER, 1936

BACKWARD TRIBES

PART V—ASSAM

The following Tribes and Communities:—

1. Kachari.
2. Boro or Boro-Kachari.
3. Rabha.
4. Miri.
5. Lalung.
6. Mikir.
7. Garo.
8. Hajong.
9. Doori.
10. Abor.
11. Mishmi.
12. Dafla.
13. Singpho.
14. Khampti.
15. Any Naga or Kuki tribe.
16. Any other tribe or community for the time being designated of by the Governor in his discretion.

[Annexure XIV]

APPENDIX D

General Summary of the Reports of the Excluded & Partially Excluded Areas (other than Assam) Sub-Committee and the North-East Frontier (Assam) Tribal and Excluded Areas Sub-Committee [including the Final Report of the E. & P. E. Areas (other than Assam) Sub-Committee.]

I

In provinces other than Assam, with the exception of the Laccadive Islands of Madras and the Spiti and Lahoul area of Punjab, there are no excluded areas. In both of these excluded areas the population is not ethically tribal. In the Laccadive Islands the islanders are Muslims of the same stock as the Moppillahs of Malabar. In Minicoy they are

* References to paras, and sections are to paras, and sections in the original reports.

believed to be of Sinhalese origin. In Spiti and Lahoul the inhabitants are of Tibetan origin. In the remaining partially excluded areas of provinces other than Assam the principal tribes to be found are Santal, Gond, Bhil, Munda, Oraon, Kondh, Ho and Savara. Many minor tribes like Korku, Pardhan, Ko, Bhumij, Warli also inhabit the areas. The total population* of all the tribes, excluding Assam, is about $13^{1}/_{2}$ millions of which approximately 8 millions inhabit the partially excluded areas. With the exception of certain small tribes like the Bonda Porja and the Kutia Kondh of Orissa, all the remaining tribes have experienced varying degrees of sophistication and come into contact with people of the plains and advanced tracts. Although the tribals living in the non-excluded areas are often hard to distinguish from the plains people among whom they live, they are generally in a backward condition which is sometimes worse than the condition of the scheduled castes. It is not possible therefore to leave them out of consideration on the ground that only the tribes in the partially excluded areas need attention. All the tribes of Provinces other than Assam, whether living in the plains or in the partially excluded tracts, should, as one whole be treated as a minority. As regards Assam, conditions in the hill districts of which the Naga Hills, the Lushai Hill and the North Cachar Hills have been excluded are on a totally different footing and the atmosphere, particularly in these excluded areas, is one which is not to be found elsewhere. These areas must therefore be treated separately from the rest. As regards plains tribals the total number of whom, including Sylhet, comes to approximately 1.5 million according to census figures, about seven lakhs are tea-garden labour from various parts of the country [not included in the schedule B to the Government of India (Legislative Assemblies Order) 1936] are not to be taken into account as tribes of Assam. The tribal population of the excluded and partially excluded area comes to about $8^{1}/_{2}$ lakhs. In Assam there are in addition the frontier tracts and tribal areas in which conditions of settled administration prevail only to a very small extent and large areas cannot be said to be under regular administration at all. Even now, in the northern frontier tracts, Tibetan tax-collectors make in roads and, in the Naga tribal area, had-hunting goes on. The administration of these areas still involves contact with foreign States and problems of defence.

2. The areas inhabited by the tribes, whether in Assam or elsewhere, are difficult of access, highly malarial and infested also in some cases by other diseases like yaws and venereal disease and lacking in such civilizing facilities as roads, schools, dispensaries and water supply. The tribes themselves are for the most part extremely simple people who can be and are exploited with ease by plains folk resulting in the passage of land formerly cultivated by them to money-lenders and other erstwhile non-agriculturists. While a good number of superstitions and even harmful practices are prevalent among them the tribes have their own customs and way of life with institutions like tribal and village panchayats or councils which are very effective in smoothing village administration. The sudden disruption of the tribals customs and ways by exposure to the impact of a more complicated and sophisticated manner of life is capable of doing great harm. Considering past experience and the strong temptation to take advantage of the tribals simplicity and weaknesses it is essential to provide statutory safeguards for the protection of the land which is the mainstay of the aboriginal's economic life and for his customs and institutions which, apart from being his own, contain elements of value. In making provisions however allowance could be made for the fact that in the non-

* Including Assam, the total population of the tribes in the provinces is 15.9 millions.

excluded areas the tribals have assimilated themselves in considerable degree to the life of the people with whom they live and the special provisions concerning legislation in particular are therefore proposed largely for the schedule areas [provinces other than Assam; see page *33 of this volume] and the autonomous districts [(Assam) Para. *13 of Report and Section *A of Appendix A on p. 19 of Report].

3. Although in the case of the autonomous districts of Assam a distinction has been made, the proposals in the main contemplate that tribals should be treated as a minority in the matter of representation in the legislatures and recruitment to the various services of the Central and Provincial Governments. In the case of the tribals of Provinces other than Assam reserved representation in the provincial and Federal Legislatures (House of the People) in proportion to the total tribal population of the Province is recommended by joint electorate. In the case of Assam similar reservation of representation for the plains tribals (excluding tea-garden labour) is recommended. In the case of the hill districts, in view of their small and exclusive populations it is recommended that representation should be provided in proportion to the population out in such a way that all fractions of a lakh are taken as one lakh even though this might involve a small weightage. In the Federal Legislature (House of the People) the autonomous hill districts should have a representative. The plains tribals should have representation in the House of the People also on the basis of their population. In all cases election by adult franchise is recommended and indirect election or nomination should not be resorted to. There should be special representation as follows: —

Laccadive Group—1.
Amindivi Group—1.
Minicoy Island—1.
Lahaul & Spiti—1.

(Para. *9 of Interim Report of Other Than Assam Sub-Committee and Para. *21 of Assam Sub-Committee Report; see also Para. 6 of Joint Report).

Non-tribals will not be eligible for elections from hill constituencies to the provincial legislature except the constituency which includes the municipality of Shilling [Para. *21 (e) and Sec. K (8) of App. A of Assam Report]. Constituencies may not be so made as to extend outside the boundaries of autonomous districts [Para. *21 (d) and Sec. K (3) or App. A, Assam Report].

4. There should be a department under the Federal Government in order to supervise and watch the development of the tribals in the different provinces and to furnish such advice and guidance as may be needed [Para. *5 of Final Report of Other Than Assam Sub-Committee].

5. The areas inhabited by the tribes are hilly and difficult country, to develop which is likely to be beyond the resources of some Provincial Governments. The Federation should therefore provide the necessary funds for the execution of approved schemes of development [Para. *17 of Interim Report and Sec. *I & K (2) of App. C of Other Than Assam Sub-Committee, also para. *14 (c) and Sec. N of App. A of Assam Sub-Committee Report]. In the case of Assam, the Federation should also meet the average deficit of the autonomous districts during the three years preceding the commencement of the Constitution [Para. *14 (c) and Sec. *N of App. A of Assam Report].

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* References to paras., sections and pages are to paras., sections and pages in the original reports.

6. The Central Government should also be in a position to require the Provincial Governments to draw up and execute schemes for the scheduled areas [Para. *17 of Interim Report and Sec. I & K (2) of App. C of Other Than Assam Sub-Committee].

7. The Federal Government should institute a special commission after ten years to enquire into the progress of the scheduled areas and the tribes [Para. *16 and Sec. K (1) of App. C of Other Than Assam Sub-Committee Report].

8. In provinces other than Assam, excepting the U. P. and the Punjab, a Tribes Advisory Council containing, to the extent of three-fourths of its membership, elected members of the provincial legislatures is recommended. The Council shall have not less than ten or more than twenty-five members [Para. *15 and Sec. J of App. C of Other Than Assam Sub-Committee Report]. For U. P. and the Punjab an advisory committee containing representatives of the tribal or backward class concerned to the extent of two thirds is recommended [Paras. *3 & 4 of Final Report; see also para.*18 of this Summary for details of U. P. Committees]. For Assam there is provision for the Governor to appoint either a permanent or an *ad hoc* commission to report or keep the Government in touch with the administration of the autonomous districts [Para. *24 & Sec. O (1) of App. A of Assam Sub-Committee Report].

9. The hill districts of Assam are to be designated as autonomous districts and special district councils should be set up for each of them. The district councils will have powers of legislation over (a) occupation or use of land other than land comprising reserved forest, (b) the management of forest other than reserved forest, (c) the use of canals and water courses for the purposes of agriculture, (d) control of jhum cultivation, (e) establishment of village and town committees and (f) village management in general. Reserved forests will be managed by the Provincial Government [Paras. *9 to 13 of Assam Sub-Committee Report].

The district council will have powers of management of all institutions which normally come under the scope of local self-government in the plains and will have full control over primary education [Para. *13 and Sec. E of App. A of Assam Sub-Committee Report].

The district council will also have powers to make its own rules and regulations regarding its own constitution [Sec. *B (5) of App. A of Assam Sub-Committee Report].

The district council will have powers to make laws affecting (a) appointment and succession of Chiefs, (b) inheritance of property councils [Para. *18 & Sec. B (3) of App. A of Assam Sub-Committee Report].

District councils and regional councils can set up courts with full powers to deal with all civil suits other than those arising out of special laws and offences punishable under the Penal Code with imprisonment of less than five years in accordance with local or tribal custom except where non-tribals are involved. (Para. *12 & Sec. D & F. of App. A of Assam. Sub-Committee Report).

Where there are different tribes in a district and they wish to manage their own affairs regional councils may be set up. Regional councils have powers limited to their customary law and the management of lands-villages and courts. Regional councils may delegate their powers to district councils [Para. *18 & Sec. B (3) of App. A of Assam Sub-Committee Report].

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* References to paras., sections and pages are to paras., sections and pages in the original reports.

The district and regional councils (Assam Hill Districts) will have powers to levy land revenue, house tax or poll tax and other taxes levied by local self-governing institutions in the plains [Para. *14 (a) & Sec. H of App. A of Assam Sub-Committee Report]. They should be assisted by provincial grants where necessary [Part. *14 (b) of Assam Report].

The District or Sub-divisional officer, as the case may be, will be *ex-officio* President of the district council of the Mikir and North Cachar Hills.

10. The district council shall be an elected body with not less than 20 or more than 40 members of whom not less than three-fourths shall be elected by universal adult franchise. Separate constituencies to be formed for separate tribes, with a population of not less than 500. Non-tribal residents of autonomous districts, if their population is not below 500, may be formed into a separate constituency for election to the district council [Para. *27 and Sec. B(1) & (2) of App. A of Assam Report].

11. In matters relating to land (provinces other than Assam), social customs and village management, if the Tribes Advisory Council advises that any law passed by the provincial legislature should not be applied to a scheduled Area the Provincial Government shall direct accordingly. The provincial Government shall have powers to direct that any other legislation shall not apply to the scheduled areas on the advice of the Council [Para. *9 & 10 and Sec. E of App. C of Other Than Assam Sub-Committee Report].

In the case of Assam legislation on these matters is left to the district council and provincial laws will not apply unless the district council applies them with or without modifications. Legislation prohibiting the consumption of non-distilled liquors will also not apply unless the district council applies it [Para. *17 & Sec. L of App. A of Assam Sub-Committee Report].

12. If the Tribes Advisory Council so advises, moneylenders in scheduled areas should not be permitted to carry on business except under a licence [Para. *26 & Sec. G of App. C of Other Than Assam Sub-Committee Interim Report].

In Assam the district council should have powers to take action to license moneylenders and non-tribal traders if the rules are approved by a majority of three-fourths of their members; this is to prevent the practice of the seprofessions by non-tribals in a manner detrimental to the interests of tribals [Para. *15 and Sec. J of App. of Assam Sub-Committee Report].

13. Allotment of waste land in a scheduled area should not be made to non-aboriginals except in accordance with rules made by the Provincial Government in consultation with the Tribes Advisory Council [Para. *25 and Sec. F of App. C of Other Than Assam Sub-Committee Report].

14. Mineral resources in the autonomous districts of Assam will be managed by the Provincial Government but the District councils will be entitled to a share of the revenue. Licences or leases shall not be given out except in consultation with the district council [Para. *16 and Sec. I of App. A of Assam Report].

15. The Governor of Assam should be empowered to set aside any act or resolution of a district council if the safety of the country is prejudiced; he should also have powers to dissolve a council if gross mismanagement is reported by the commission [Para. *19 and Sec. Q & R of App. A of Assam Sub-Committee Report].

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* Reference to pages, paras., and sections are to pages, paras., and sections in the original reports.

In provinces other than Assam the Governor should have the special responsibility to see that schemes of development are drawn up and implemented. This should be enjoyed on him by instructions [Para. *18 of Other Than Assam Report].

16. The Central Government should continue to administer the frontier tracts and tribal area with the Government of Assam as its agent until administration has been satisfactorily established over a sufficiently wide area. Areas over which administration has been satisfactorily established may be taken over with the approval of the Federal Government [Section *P of App. A and Para. 20 (a) of Assam Sub-Committee Report].

Provincial Governments (other than Assam) should have powers to make special regulations for the trial of petty criminal and civil cases in scheduled areas, with a view to simplify procedure [Section *M of App. A of Other Than Assam Report].

17. The estimated revenue and expenditure pertaining to a scheduled area or an autonomous district should be shown separately in the provincial budget [Para. *18 & Section H of App. C of Other Than Assam Sub-Committee Report and Para. *14 (b) and Section M of App. A of Assam Sub-Committee Report].

18. There shall be a separate Minister for tribal welfare in the C. P., Orissa and Bihar [Para. *20 & Section L of App. C of Other Than Assam Sub-Committee Report]. In Assam representation for the hill people in the Ministry should be guaranteed by statutory provision if possible or at least by a suitable instruction in the instrument of Instructions [Para. *22; see also Section O(3) of App. A of Assam Sub-Committee Report].

19. For the partially excluded areas of the U. P. an advisory committee consisting of tribals or backward people to the extent of two-thirds of its membership, provision to prevent the transfer of land from the aboriginals to non-aboriginals, (except with special permission) for regulations for the trial of petty civil and criminal cases by simple procedure, is recommended. The revenue and expenditure of the area should be shown separately in the provincial budget and there should be a seat reserved in the provincial assembly for a tribal from the partially excluded area of the Mirzapur District. There should also be provision for the Federal Government to call for reports from the Provincial Government regarding the administration of the areas.

Parallel provisions are recommended for Spiti & Lahoul (E. Punjab) which should have one seat in the provincial legislature. [Paras. *3 & 4 of Final Report of Other Than Assam Sub-Committee].

II

OTHER RECOMMENDATIONS

20. Tribal panchayats should be encouraged wherever possible. [Para *22 of Interim Report Other Than Assam Sub-Committee]. Shifting cultivation should be discouraged [Para. *23 of Interim Report of Other Than Assam Sub-Committee & Para. *11 of Assam Sub-Committee Report]. Temperance propaganda should be carried on as part of tribal welfare work [Para. *24 of Other Than Assam Sub-Committee Report].

21. Tribals should be recruited in due proportion to all Government services. Non-tribals posted to tribal areas should be selected with care [Para. *25 of Assam Report and Para. 21 of Other Than Assam Report].

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* References to appendices, paras., and sections are to appendices, paras., and sections in the original reports.

Special attention should be paid to the recruitment of tribes to the Armed Forces of India [Para. *6 of Final Report of Other Than Assam Sub-Committee].

22. The abolition of the powers of Supurdas (Dudhi area of Mirzapur District, U. P.) to accept surrender and make a reallotment of land is recommended. The system of Sayanas in Jaunsar Bawar (U. P.) should be abolished and revenue collected through officials.

23. A general review of the powers and functions of ancient systems of village or tribal headmen should be undertaken with a view to removing the grievances of tribals and the abolition of oppressive powers and general reform [Para. *7 of Final Report of Other Than Assam Sub-Committee].

24. Provincial Governments should utilise the services of approved non-official organisations doing welfare work among the tribals, with a view to adding to the volume of development work, by giving them grants-in-aid [Para. *8 of Final Report of Other Than Assam Sub-Committee].

25. It should be made compulsory for officials posted to aboriginal tracts to obtain a working knowledge of the local language within a reasonable period.

26. Posa payments to the frontier tribes should be continued [Para. *20 (c) of Assam Sub-Committee Report].

The pace of extending administration in the frontier tracts should be greatly accelerated and additional officers appointed where necessary [Para. *20 (a) of Assam Sub-Committee Report].

The Provincial Government should undertake an examination of the position in the frontier tracts with a view to taking a decision whether any portion could be taken immediately by it under provincial administration [Para. *20 (b) of Assam Sub-Committee Report].

NOTE.—The contents of Appendix A of the Assam Report [page 19] and of Appendix *C [page 33] of this volume must be studied for a full picture of the constitutional provisions recommended. [See also pages *300—32 for Schedule of tribes.]

* Reference to pages, paras., and sections are to pages, paras., and sections in the original reports.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 5th November 1948

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 THE PLEDGE AND SIGNING THE REGISTER

The following members took the Pledge and signed the Register:

1. Mr. Mohamed Ismail Sahib (Madras : Muslim).
2. Shri P. S. Rau (Jodhpur).

MOTION *re.* DRAFT CONSTITUTION— *(contd.)*

Mr. President : I have received an amendment to the Honourable Dr. Ambedkar's motion from Seth Damodar Swarup which is more or less of the same nature as that which was moved by Maulana Hasrat Mohani yesterday, but as it is slightly different I will allow him to move it. I propose that members should have limited time for speaking on this motion. I understand there are many members who desire to participate in the discussion and I therefore suggest that we might sit today and tomorrow for general discussion instead of today only, and tomorrow we will finally dispose of the motion moved by Dr. Ambedkar. Then I will give two days *i.e.* Sunday and Monday for amendments, and from Wednesday we will sit and take up the Articles one after another. To enable the largest number of members to participate in the discussion today I think ten minutes would be enough for each member, and if the House approves of it I should like to stick to that time limit.

Shri T. T. Krishnamachari (Madras : General): Sir, in anticipation of Saturday being a holiday some of us have entered into other engagements like meetings of Select Committees on Bills.

Mr. President : I am afraid I have no information about meetings of committees, etc., and I should have been consulted about the fixation of these meetings while the Assembly was going to sit. Therefore I propose to give priority to meetings of this House.

Shri T. T. Krishnamachari : Sir, while the fixing of a time limit is no doubt desirable, I submit that in a matter of such importance even if one deals with only one aspect of the subject it is not possible to say anything relevant or to the point in ten minutes. Therefore I humbly suggest that such a time limit should not be adhered to. Otherwise the discussion will be stifled and nobody can make any point. I have something to say myself on the financial provisions.

Mr. President : If I find that any particular member is making a useful contribution to the debate I will relax the time limit in his favour.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Sir, I should like to suggest that two or three more days may be given for the general discussion because in considering the Draft Constitution the general discussion will be a very important feature of the thing and members can know the feelings of people from different parts of the country on different aspects of

[Pandit Lakshmi Kanta Maitra]

the Constitution. That will help us greatly in drafting our amendments and deciding whether to move or not to move particular amendments. As a matter of fact even for ordinary legislation two or three days are always given. In the Finance Bill which operates only for one year five or six days are given for the general discussion. Here if you give us two or three days more the time will not be lost. That will give us an idea as to the direction in which the minds of different members are working on different aspects of the question. So I suggest that you may be pleased to give us two or three days more for the general discussion.

Shri K. Hanumanthaiya (Mysore State) : Sir, in a House of three hundred members two days are hardly sufficient. It is only about ten members who can speak and it would not allow all sections to participate in the debate. Even five days would hardly be enough.

The Honourable Shri K. Santhanam (Madras : General): Sir, I suggest that a discussion of the entire Constitution will not be of much use. It will not be possible for any one to make any useful contribution in less than 45 minutes or one hour. So I suggest that as we take up each para. we may have a short general discussion on that para. and then proceed to pass it. In that way we can have a useful general discussion than if the debate ranges over the entire constitution.

Mr. President : I think we had better not take any more time in discussing how we shall proceed. Let us proceed and we shall see.

Shri B. Das (Orissa : General): Sir, I wish to support the suggestion made by my friend Shri Santhanam. I wish to point out, however, that several documents have not been made available to members as yet. For instance, the report of the Boundary Committee we have not received so far. Then certain documents were available to the Drafting Committee which the House has a right to see. For instance, there are the opinions of the provincial Governments on the draft constitution, the views of the High Courts and the Federal Court on the various provisions about the judiciary. There are legal aspects of many issues which we must know and the views of the High Courts and Federal Court are therefore very important; these documents should therefore be made available to us; then only we can carry on further discussion.

Mr. President : We shall try to supply members with copies of opinions of provincial Governments, High Courts and such other important bodies, say by Monday or Tuesday next.

Shri R. K. Sidhwa (C. P. and Berar : General) : On a point of information Sir. You said that you will allow Seth Damodar Swarup to move the motion of which he has given notice. Yesterday, Maulana Hasrat Mohani moved a similar motion. May I know whether this motion will be taken up independently of the general discussion for which you have allowed two days?

Mr. President : I shall take votes on the adjournment motion immediately after discussion on these two propositions is over and then we shall proceed with the general discussion.

Shri H. V. Kamath (C. P. and Berar : General) : I have given notice of an amendment to the original motion.

Mr. President : We will take it up when we have finished the adjournment motion.

Maulana Hasrat Mohani (United Provinces : Muslim) : It has been published in the 'Statesman' of the 4th November that the Preamble will be debated and put to vote last. I understood from the observation made by you that you will adopt that course. If this is so,.....

Mr. President : I am not concerned with what the newspapers publish.

Maulana Hasrat Mohani: You stated in your observations yesterday that this matter will be decided now and that it should not be taken up again. Do you mean that the Preamble will be taken up now?

Mr. President : I never said anything about the Preamble or any part of the Constitution.

Maulana Hasrat Mohani: I want to move the amendment to the Preamble at this stage.

Mr. President : No amendment to the Preamble or any part of the Constitution can be taken up at this stage. We shall take up all amendments in due course.

Shri Damodar Swarup Seth (United Provinces : General): *[Mr. President, with your permission I want to place this amendment before the House:

"Whereas the present Constituent Assembly was not elected on the basis of adult franchise and whereas the final constitution of free India should be based on the will of the entire people of India, this Constituent Assembly resolves that while it should continue to function as Parliament of the Indian Union, necessary arrangements should be made for convening a new Constituent Assembly to be elected on the basis of adult franchise and that the Draft Constitution prepared by the Drafting Committee be placed before it for its consideration and adoption with such amendments as it may deem necessary."

Sir, before speaking on this amendment I deem it necessary to point out that I had given notice of a separate resolution to the effect that the consideration of the Draft Constitution should for the time be postponed. But unfortunately for some reason that resolution of mine has not been admitted. Therefore I have no option but to move an amendment for the same purpose as the resolution.

Sir, yesterday when Maulana Hasrat Mohani Sahib moved his amendment, it was with regret that I noted that some honourable members of this House were mocking at it and were in a way playing with it.]

Shri S. Nagappa (Madras : General): Mr. President, I would like to know from the honourable member who is moving this motion whether, when he was elected to this august body, he did not recognise this as a sovereign body competent to act as the Constituent Assembly? If not why did he agree to become a member? (*Laughter.*)

Mr. President : That is not a point of order.

Shri S. Nagappa: I would like to know whether he is in order in saying that this body is not a Constituent Assembly and that a new Assembly should be constituted on the basis of adult franchise.

Mr. President : He is in order in moving his motion. (*Renewed laughter*)

Shri Damodar Swarup Seth: *[Sir, I was saying that it is easy to ridicule a resolution or amendment or to ridicule the views of its supporters but it requires some courage to understand the reality and to appreciate it. I am afraid that this amendment of mine may displease some of my friends. But everyone has a duty to perform. It is the duty of every man unhesitatingly and fearlessly to give expression to the voice of his conscience and nature before his fellow beings regardless of the consequences that may follow or of the opinion people may form about him and this because I believe, Sir, that in the lives of nations as in the lives of individuals also there is sometimes a situation in which they have to swallow the bitterest pill. I think that the consideration of the Draft Constitution has brought such an occasion in our country and therefore we need not worry about our views being

*[ ] Translation of Hindustani speech.

[Shri Damodar Swarup Seth]

welcome or unwelcome to one person or the other. We have to perform our duty. I shall at first try to throw light on the representative character of this Constituent Assembly which is assembled here and which is going to consider the Draft Constitution and to pass it.

Sir, the first characteristic which a constitution-making body of a free country should possess is that it should be able to claim that it represents the will of the entire people of that country. Sir, with your permission I would put it to the Honourable Members present in this House whether they can sincerely claim that they represent, in this House, the entire people of India. I can emphatically say that this House cannot claim to represent the whole country. At the most it can claim to represent that fifteen per cent of the population of India who had elected the members to the provincial legislatures. The election too, by virtue of which the members of this House are here, was not a direct one, they are here by virtue of an indirect election. In these circumstances, when eighty-five per cent of the people of the country are not represented in this House and when they have no voice here, it will be in my opinion a very great mistake to say that this House is competent to frame a Constitution for the whole country. Besides the representative character of the Draft Constitution that is being placed before the house, we have also to consider its nature. We see that the Constitutions of United States of America and Britain have been copied in this Constitution. Some articles have been borrowed from the Constitutions of Ireland, Australia and Canada. A paper has rightly remarked that this is a slavish imitation of the Constitutions of these countries. Sir, the conditions that prevailed in America, Britain, Canada or Australia do not obtain in our country. The conditions prevalent in our country can be compared only with those of Russia—Russia of pre-Soviet Republic days. Besides, we have seven lakh villages in our country and the village is its smallest unit. Thanks to Mahatma Gandhi, our struggle of freedom reached the villages and it was because of the villages and because of their might that India became free.

I want to ask whether there is any mention of villages and any place for them in the structure of this great Constitution. No, nowhere. The constitution of a free country should be based on 'local self government'. We see nothing of local self-government anywhere in this Constitution. This Constitution as a whole, instead of being evolved from our life and reared from the bottom upwards is being imported from outside and built above down-words. A constitution which is not based on units and in the making of which they have no voice, in which there is not even a mention of thousands and lakhs of villages of India and in framing which they have had no hand,—well you can give such a constitution to the country but I very much doubt whether you would be able to keep it for long.

Sir, our Indian Republic should have been a Union—a Union of small autonomous republic. All those autonomous republic by joining together would have formed the bigger Republic of India. Had there been such autonomous republics, neither the question of linguistic provinces nor of communal majorities or minorities or of backward classes would have arisen. The autonomous Units of the Union could have joined the unions of their choice according to their culture. The Union that would have been formed in our country in this way, would not have required so much emphasis on centralization as our learned Doctor Ambedkar has laid. Centralization is a good thing and is useful at times but we forget that all through his life Mahatma Gandhi emphasised the fact that too much centralization of power makes that power totalitarian and takes it towards fascist ideals. The only method of safeguarding against totalitarianism and fascism is that power should be

decentralised to the greatest extent. We would have thus brought about such a centralization of power through welding of heart as could not be matched anywhere in the world. But the natural consequence of centralising power by law will be that our country which has all along opposed Fascism—even today we claim to strongly oppose it—will gradually move towards Fascism. Therefore, Sir, I want that this House should seriously consider these matters. This is not an ordinary matter. We should not treat this constitution—making as a light and playful business. On the contrary it is a step pregnant with historic consequences. After hundreds, nay, thousands of years I would say, and it would be no exaggeration to say so, that in the history of India it is for the first time that we have this opportunity of framing the Constitution of the whole of India. Therefore no amount of thought we can give to this Constitution can be too much. We may be told and we have been told that let this Constitution be adopted, for the assembly, elected on adult franchise provided therein, would be quite competent to effect the necessary amendments in it.

But Sir, when the Constitution is once framed, there will be legal difficulties in amending it. Moreover it would be matter of pride for us that a task of such importance in the history of India, which we are expected to complete, should have been left half-finished by us to be completed by others. The coming generations will only deplore such a course of action on our part. Therefore if we take into consideration the unrepresentative character of the Draft Constitution that is before us and is nature and structure, we come to the conclusion that it is not in harmony with our present conditions, our culture and our customs. Therefore it is necessary that we should postpone its consideration for the time being and should form a new Constituent Assembly on the basis of adult franchise so that it may go through this constitution, consider it and amend it where necessary. Till the formation of this new Constituent Assembly the present Constituent Assembly can function as the Parliament of India. We do not want that there should be any delay in this. No doubt we have taken two years to do this work and we might take an year or so more but one or two years are nothing in the life of a nation. So long as this Constitution is not finalised we can continue to function as we have been doing so far. As I have said we are going to frame the Constitution of United India; it should be a new and ideal Constitution.

Today after India has attained freedom it is not necessary for me to tell you that the world is looking up to India. It expects something new from India. At such a time as the present one it was necessary that we should have placed before the world a Draft Constitution, a Constitution, which could have been taken as an ideal. Instead we have copied the constitutions of other countries and incorporated some of their parts and in this way prepared a Constitution. As I have said, from the structure of the Constitution it appears that it stands on its head and not on its legs. Thousands and lakhs of villages of India neither had any hand nor any voice in its framing. I have no hesitation in saying that if lakhs of villages of India had been given their share on the basis of adult franchise in drafting this Constitution its shape would have been altogether different. What a havoc is poverty causing in our country! What hunger and nakedness are they not suffering from! Was it not then necessary that the right to work and right to employment were included in the Fundamental Rights declared by this Constitution and the people of this land were freed from the worry about their daily food and clothing? Every man shall have a right to receive education; all these things should have been included in the Fundamental Rights. But, Sir, I need not say anything else except point out that even Honourable Dr. Ambedkar has had to realize and has also admitted in his speech that many objections have been raised in regard to the Fundamental Rights. Not withstanding the reasoning of the learned Doctor, I find it difficult to accept that the Fundamental Rights and other rights

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are one and the same thing. I understand that Fundamental Rights are those rights which cannot be abrogated by anybody—nay, not even by the government. One can be deprived of these rights only as a punishment for an offence, awarded by a Court of Law. But if the Fundamental Rights were to be at the mercy of the government, they cease to be Fundamental Rights. Sir, what I mean by all this is that if the thousands of villages of the country, the poor classes and the labourers of India had any hand in framing this Constitution, it would have been quite different from what it is today.

With your permission, therefore, Sir, I would appeal to the House that, treating this Constitution not as ordinary but as a historical document, they should give proper consideration to it. And I would appeal to you, Sir, that consideration of the Draft Constitution be postponed for the present and the country be given an opportunity to express itself so that the Constitution that may be framed may really be a democratic Constitution. With these words I close my speech on the amendment.]

Mr. President : *[The motion is before you; those who desire to speak may do so.]

Pandit Balkrishna Sharma (United Provinces : General): *[Mr. President, my friend Seth Damodar Swarup has submitted a motion before the House today that we should postpone the consideration of the Draft Constitution placed before us. In support of his motion he has advanced some arguments. Before taking up an analysis of those arguments I would like to draw the attention of the Assembly to one or two important matters. The first thing that strikes me is that the motion moved by my friend is absolutely undesirable. After all, for what purpose have we assembled here? We have assembled here having been elected to frame the Constitution. The political party, to which the Honourable Member belongs, once decided that this Constituent Assembly is not an independent sovereign body, and so it should be boycotted. Again that party, under what considerations I know not, decided that they should seek election to it. They were elected to this Assembly but some of their party-men did not attend the Assembly in the beginning. But later, again under a consideration, of which I am not aware, they decided to participate in this Assembly. Now you can imagine what opinion can be formed of a group, party or an individual whose policy changes every moment, which is satisfied at one moment and discontented the next. I think the idea that we should not frame the Constitution in this House struck the mind of my friend Seth Damodar Swarup rather too late. In my humble opinion, the arguments advanced by him are weak, groundless, uninteresting and senseless to such a degree as cannot be defined. His first argument is that the Constituent Assembly does not have a representative character. I would like to submit that there is ridiculous aspect of democracy, and that comes to the surface when to make democracy fully representative in character, we evolve such institutions as proportional representation and there by establish fascism amongst ourselves. In Germany, Italy and France, wherever attempts were made to establish this type of Democracy, the only result was that it was soon transformed into fascism. The argument, that we are the representatives of 15 per cent of the population and that the representatives of 85 per cent of the population are not with us and therefore we should postpone on that ground the consideration of the Constitution, is a fallacious one—fallacious because nowhere in the world can a model assembly be constituted. We have represented the whole of the country in this Assembly. Sethji had been a member of the Congress till recently; on the basis of the formation of such associations, could he say that the Congress was a body representing the whole of India? While

*[ ] Translation of Hindustani speech.

he could not say that on numerical basis, my friend Sethji has always considered himself to be a divine lieutenant in India. Even though not even one poor man, not even a farmer, and a worker has elected him to represent India, yet he considers himself to be a representative. And why does he do so? As the saying goes in the Russian language "we are the will of the peoples". We are the representatives of the will, emotions and ambitions of the people, and in this capacity representing the whole of India we are framing our Constitution, though our representation is not based on numbers. Hence, I think that it is not proper to raise this fallacious argument about percentages.

The second point which he has raised is that we have borrowed in our Constitution many articles from the constitutions of other countries. I think that Honourable Dr. Ambedkar has very nicely answered this question in his yesterday's speech. I would only like to say that if my friend Seth Damodar Swarup runs so much after originality which I believe he intends to do, I am afraid he would make himself extremely ridiculous. It will be because when he talks of originality he himself is not really original. His eyes are fixed on Russia and he comments that Russian Constitution has not been followed in framing this Constitution. This means that had we followed Russia we would have been original, but because we have followed Australia, Canada, U.S.A. and U.K. or borrowed many articles from them or received an inspiration from them, we are not original. Now it is for us to choose which one to follow. Sethji and Maulana Hasrat Mohani incline towards Russia. We favour friendship with Russia. With great interest and sympathy we witness the great experiment Russia is making to organise men; but it is definite that we cannot accept even in dream its policy to subordinate or annihilate the individual for the sake of the state in all important stages of life. Sethji has quoted Mahatma Gandhi, who was against over-centralisation. My friend should remember that Mahatma Gandhi was essentially an anarchist. He was a philosophical anarchist. His view was that in the ultimate analysis anarchism was beneficial, for his aim was to raise man to a pedestal were he does not need external restraint. You and we are not such great souls. It would be ridiculous for us to attempt to talk of anarchism by simply repeating the words of Gandhiji and trying to put it into actual practice. Hence, it is useless to repeat the words of Mahatma Gandhi here. By quoting Mahatma Gandhi in support of his arguments Sethji has not revealed any special power of reasoning. He wants to know what position is held by villages, labourers, farmers, and local self-governments in this Constitution. I would like to submit humbly that if he will take the trouble of studying the whole of the Constitution carefully, he would come to know that even today in the making of this Constitution we are not ignoring that sacred inspiration of Mahatma Gandhi which led him to give us a message that India does not consist of cities but of the seven lakhs of villages. Mr. President, I, therefore, oppose the motion of Sethji and I am sure that the House will not at all hesitate in rejecting it outright.]

Prof. Shibban Lal Saksena (United Provinces : General): Mr. President, Sir, Seth Damodar Swarup's amendment should not be dismissed so lightly as my Honourable friend Shri Balkrishna Sharma has done. We ourselves, when the Cabinet Mission were in India, wanted that this Assembly should be elected on adult suffrage; but the Britishers never wanted election on adult suffrage. They forced on us this method of election. If they had acceded to our demand, we would have been elected on adult suffrage. Seth Damodar Swarup knows full well that the Congress party which is in the majority in this House, would have welcomed it. The issue which he has raised is a fundamental one and we must all admit that an Assembly elected on adult suffrage would be the real Constituent Assembly, though I am sure a large majority of these same members would be again returned.

[Prof. Shibban Lal Saksena]

But, today, the question is a practical one: can we adjourn now and wait for a year or so to have a new election for the Constituent Assembly and then frame our constitution? I think the present Constitution which has been framed by a foreign Parliament is not one under which I would like to remain a minute longer than I can help. I therefore think that today we must go on with the consideration of this Draft Constitution but when we come to the chapter for changing the Constitution we must make changes in the Constitution in the first ten years much easier than it is at present in the Draft. I think we must make it possible for any change in the Constitution to be made by simple majority and not by two-thirds majority.

Sethji has also raised other issues. He has said this Constitution does not give any voice to the villages. He is thinking of the Soviet Constitution. Mahatma Gandhi's own Constitution, of which an outline was given by Shri S.N. Aggarwal, was also based on village republics or village panchayats, and I think we shall have to discuss this point carefully when we come to that aspect of the Constitution. I was pained to hear from Dr. Ambedkar that he rather despised the system in which villages had a paramount voice. I think we will have to amend that portion properly. This Assembly is now entering upon its task and is fully entitled to change the entire Constitution. Sethji has today given his amendments and we shall be very glad to discuss them. I do not think that Sethji is alone in the views he expressed. We must not dismiss these things with the lightness with which my predecessor has dismissed them. In this Assembly we must discuss every aspect of this Constitution with seriousness and everybody must be treated with respect. Other things which he has said, can also be discussed at the proper time. He has said that there is no provision in this Constitution for Local Self Government in units. It is an important thing which must be included in the Constitution and at present there is this omission in the present Constitution. But I don't think that Sethji's advice that we should adjourn now and wait for a year for the Constitution to be made by a new Constituent Assembly is proper, because the new Assembly will have to be elected afresh and this House will have to make some rules for electing a new Constituent Assembly and that will take some time. Then we will have to sit now to make some rules for election of the new Constituent Assembly and then to have the new Constitution discussed by it. I think the new Houses of Parliament in this Draft Constitution elected under adult suffrage will have full power to change the Constitution, and if that clause which makes it difficult to change the Constitution is removed, the purpose of this amendment will have been served. I therefore suggest that when that portion comes, we will discuss that, but at present the adjournment will not be proper. I therefore oppose this amendment.

Shri S. Nagappa (Madras : General): Mr. President, Sir, I am sorry that I have to oppose my Honourable friend's motion that is before the House. My friend has been saying that he has not been returned to this Assembly in order to make a Constitution. I am at a loss to understand what is the purpose for which he contested these elections. I think it was clear to him when he got into this Assembly that he was coming here only in order to frame a Constitution. But his point is that this is not a representative body. May I ask him which sort of body will be really representative? Are these members not elected by the elected representatives of the people? No doubt I agree that there was no adult suffrage. Whose fault is it? Is it the fault of the present Government or is it the fault of the previous Government? My friend would have been in order if he had asked the previous Government and he was also aware that the previous Government had not enough time. They were eager to go and so, even if they wanted to prepare the electoral rolls on adult suffrage and conduct elections, they would have taken two years. I don't know whether my friend wanted to have the foreign domination for two more years. We

have been elected by the representatives of the people and every member represents some thousands of people. No doubt he does not represent every one of the people that are in that province but he represents the educated that are the cream of the people. When they have sent these members herewith the definite task that they should frame the Constitution and moreover when this was the body that has received the power from the foreigner, it is more in order and more representative than any other. Even if elections are held on an adult suffrage, can my friend guarantee that there will be other than these members? I doubt it. These are the chosen leaders not from today or yesterday but for so many years and the people have confidence in them. Even when the country was going through turmoil and difficulties the people had reposed confidence in them.

My friend was saying that there are no poor people's representatives. What are we? I represent the poorest of the poor. He was talking of the depressed classes and backward communities. Are we not depressed class people? What about Dr. Ambedkar? Whom does he represent? He represents the lowest rung of the ladder and can there be any other representative other than Dr. Ambedkar from those people? It is our fortune that the task of framing the Constitution has been entrusted to the representative — the real representative — of the lowest rung of the ladder and I can't understand when my friend says the poor have not been given a chance to be represented here, and the worker has not been given a chance to be represented here. If that was the case, may I ask why there was no agitation in the country when this Assembly was elected? There were so many organisations and there were so many papers who could have complained and agitated; and almost all people were eager that this body must come into existence as early as possible and relieve the Britisher who was anxious to leave this country. When that was the case I am surprised at my friend's observations. If my friend does not consider this as a representative body, he should have refrained from coming into this Assembly. He did not do that. He was wise enough to get into this and continue for two years and be called a Member of this Assembly. Having done all that, now when the Constitution is ready and ripe for adoption, he calmly comes and says that this is not a representative body. I see no logic or reason in that. Can be prove that except a section of the country which is dissatisfied and a section which could not get into the House or a section which is jealous of the present Government, there is any large body of people in the country who are not satisfied with the representative character of this House?

My friend the Maulana talked in the same strain. I do not know whether he took his inspiration from Shri Damodar Swarup or whether the latter took his inspiration from the Maulana, or whether they conspired among themselves. Any how their view seems peculiar not only to me but to large numbers of people. I do not know what the Maulana was trying to impress on the House, but he seems to be more fond of the Soviet Constitution than of his own Constitution. Forgetting that he can frame a better constitution than the Soviet or any other constitution, he told us that he was for adopting the Soviet Constitution. I do not know the reason why he has been tempted to adopt that constitution. If his argument is that as we have borrowed from every constitution we should borrow from the Soviet Constitution also, I can see some reason in it. Here he says that as we have borrowed from America and England and New Zealand we should borrow also from Soviet Russia: But why should he be so fond of that? We borrow from other countries what is fit to be adopted by us, when they suit our conditions and requirements. It is not for the sake of borrowing that we do this and our Constitution is not a combination or mixture of all other constitutions. We study other constitutions and consider our own

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customs and usages and culture, and we borrow what suits us best. There is nothing wrong in borrowing something which suits us best.

Sir, I oppose the motion.

Shri Syamanandan Sahaya (Bihar : General): Sir, I propose a closure of the debate on the amendments and move that the question be now put. My Honourable friend Seth Damodar Swarup has done his duty by voicing the opinion of a certain political section of the country and we need not take any more time over this. We may now proceed to discuss the Draft Constitution generally.

Mr. President : The question is:

That the question be now put.

The motion was adopted.

Mr. President : The question is:

That Maulana Hasrat Mohani's motion be adopted.

The motion was negatived.

Mr. President : The question is :

That Seth Damodar Swarup's motion be adopted.

The motion was negatived.

Mr. President : The House will now proceed to a general discussion of the motion by Dr. Ambedkar. Shri H. V. Kamath has an amendment on it.

Shri H. V. Kamath: Sir, I move:

"That in the motion the word 'Constituent' be deleted and for the words 'settled by the Drafting Committee' the words 'prepared by the Drafting Committee' be substituted."

It is a purely verbal amendment and there is no need to enter into a discussion or controversy over it. The word "Constituent" is redundant as "Assembly" means the Constituent Assembly. As regards the other part, the copy of the Draft Constitution that we have got says, "prepared by the Drafting Committee". I wish to bring Dr. Ambedkar's motion into line with this even at the risk of being dubbed a stickler or purist. Sir, I move.

Mr. President : I will draw attention to Rule 38-A which uses the words "Draft Constitution of India settled by the Drafting Committee". Dr. Ambedkar's motion takes the word from that rule.

Shri H. V. Kamath: By leave of the President, I shall now speak on the motion itself. While I support the motion I do not accept all the observations that Dr. Ambedkar made in the course of his learned address yesterday. As regards those aspects of the question which deal with the strength of the State, which deal with the provision to convert a Federal State into a unitary one in the event of emergency, as regards the undesirability of the various component units of the State to maintain armies to the prejudice of the security of the Union as a whole, I endorse his observations wholeheartedly. He told us with some pride—I think—that the Constitution is borrowed largely from the Government of India Act and considerably from the constitutions of the United Kingdom, United States and Australia and perhaps Canada also. I listened to his speech with considerable pleasure and not a little profit. But I expected him to tell us what, if any, had been borrowed from our political past, from the political and spiritual genius of the Indian people. Of that there was not a single word throughout the whole speech. This is perhaps in tune with the times. The other day Shrimati Vijaya lakshmi while addressing the United Nations General Assembly in Paris observed with pride that we in India have borrowed from France their slogan of liberty, equality and fraternity; we have taken this from England and that from America, but she did not

say what we have borrowed from our own past, from our own political and historic past, from our long and chequered history of which we are so proud.

On one thing I join issue with Dr. Ambedkar. He was pleased to refer to the villages—I am quoting from a press report in the absence of the official copy—as "sinks of localism and dens of ignorance, narrow-mindedness and communalism"; and he also laid at the door of a certain Metcalfe our "pathetic faith" in village communities. Sir, I may say that it is not owing to Metcalfe but owing to a far greater man who has liberated us in recent times, our Master and the Father of our nation, that this love of ours for the villages has grown, our faith in the village republics and our rural communities has grown and we have cherished it with all our heart. It is due to Mahatma Gandhi, it is due to you, Sir, and it is due to Sardar Patel and Pandit Nehru and Netaji Bose that we have come to love our village folk. With all deference to Dr. Ambedkar, I differ from him in this regard. His attitude yesterday was typical of the urban highbrow; and if that is going to be our attitude towards the village folk, I can only say, "God save us." If we do not cultivate sympathy and love and affection for our villages and rural folk I do not see how we can uplift our country. Mahatma Gandhi taught us in almost the last mantra that he gave in the last days of his life to strive for panchayat raj. If Dr. Ambedkar cannot see his way to accept this, I do not see what remedy or panacea he has got for uplifting our villages. In my own province of C.P. and Berar we have recently launched upon a scheme of Janapadas, of local self-government and decentralisation; and that is entirely in consonance with the teachings of our Master. I hope that scheme will come to fruition and be an example to the rest of the country. Sir, it was with considerable pain that I heard Dr. Ambedkar refer to our villages in that fashion, with dislike, if not with contempt. Perhaps the fault lies with the composition of the Drafting Committee, among the members of which no one, with the sole exception of Sriyut Munshi, has taken any active part in the struggle for our country's freedom. None of them is therefore capable of entering into the spirit of our struggle, the spirit that animated us; they cannot comprehend with their hearts—I am not talking of the head it is comparatively easy to understand with the head—the turmoiled birth of our nation after years of travail and tribulation. That is why the tone of Dr. Ambedkar's speech yesterday with regard to our poorest, the lowliest and the lost was what it was. I am sorry he relied on Metcalfe only. Other historians and research scholars have also given us precious information in this regard. I do not know if he has read a book called "Indian Polity" by Dr. Jayaswal; I do not know if he has read another book by a greater man, "The Spirit and Form of Indian Polity" by Sree Aurobindo. From these books we learn how our polity in ancient times was securely built on village communities which were autonomous and self-contained; and that is why our civilisation has survived through all these ages. If we lose sight of the strength of our polity we lose sight of everything. I will read to the House a brief description of what our polity was and what its strength was:

"At the height of its evolution and in the great days of Indian civilisation we find an admirable political system, efficient in the highest degree and very perfectly combining village and urban self-government with stability and order. The State carried on its work administrative, judicial, financial and protective—without destroying or encroaching on the rights and free activities of the people and its constituent bodies in the same department. The royal courts in capital and country were the supreme judicial authority coordinating the administration of justice throughout the kingdom."

That is so far as these village republics are concerned. I believe the day is not far distant when not merely India but the whole world, if it wants peace and

[Shri H. V. Kamath]

security and prosperity and happiness, will have to decentralise and establish village republics and town republics, and on the basis of this they will have to build their State; otherwise the world is in for hard times.

Then, Sir, I find in Dr. Ambedkar's speech considerable amount of thunder and plenty of lightning. But I could not find the light that sustains, the light that warms, the light that gives life, the light eternal. I heard what he said about minorities in India. I do not know on what basis he made this remark that no minority in India had taken this stand. After referring to the Redmond-Carson episode in the history of the Irish struggle, he went on to say that no minority in India has taken this stand. "Damn your safeguards" said Carson, "we don't want to be ruled by you."

Dr. Ambedkar said: "They have loyally accepted the rule of the majority which is basically a communal majority and not a political majority."

If, Sir, our minorities had really taken this stand, India's history would have been different. After what has happened during the last two years, can we say that no minority took this stand? It is because a certain minority took this stand and said, "We do not want to be ruled by the majority. Go to hell.", we had the tragedy of the last eighteen months. If Dr. Ambedkar was referring to India before 15th August 1947, I fail to understand him. How can he say that no minority stood for safeguards and said, 'We do not want to be ruled by you'? It is because a certain organisation took the stand, "No safeguards. We do not want safeguards. We want a separate State.", that ultimately Pakistan came into being and we had to witness the tragedy of the past eighteen months.

In 1927, I as a student attended the Madras session of the Congress. Maulana Mahomed Ali and Pandit Malaviya were both present there. There was a question about safeguards and Pandit Malaviya made a moving speech that went straight to the heart. He said: "What safeguards did you ask from the Secretary of State for India or from the Government of India? We are here. What better safeguards you want?" After that speech, Maulana Mahomed Ali came to the rostrum, embraced Pandit Malaviya and said: "I do not want any safeguards. We want to live as Indians, as part of the Indian body-politic. We want no safeguards from the British Government. Pandit Malaviya is our best safeguard." If that spirit had continued to animate us, we would have remained as united India, a single country, a single State and a single nation. This being so, I fail to understand what Dr. Ambedkar means by saying that no minority in India has taken this stand. The majority has always been willing to grant them safeguards, adequate safeguards. But the minority would have nothing to do with it. The minority in India took the same stand as Carson took in Ireland. That is why, to the detriment of the Irish body-politic division was resorted to, as was done in India, resulting in disturbance of the peace and progress of the country.

Well, Sir, there are one or two other aspects of the Constitution I would like to touch upon. One relates to Article 280 of the Constitution, *viz.,* the one about Fundamental Rights.

Mr. President : The Honourable Member has almost exhausted his time.

Shri H. V. Kamath: I only want one or two more minutes, Sir. The Fundamental Rights could be suspended in the event of an emergency and that means that the power of the High Court can be taken away. It is a dangerous provision to make in the Constitution. If I remember aright, even during the last world war, the British Government did not suspend the right of the citizen to move the appropriate courts to issue writs of *haebeas corpus* and so on. I do

not know whether we should go one better, rather one worse, than the British Government.

Then we have the Ordinance-making power given in Article 102. This should be done away with. When we were fighting the British Government, we attacked this power, this ordinance-making power of the Governor-General and the Viceroy. Here we are making this provision, not for an emergency. Article 102 merely says that the President may promulgate Ordinances whenever he is so satisfied. That power should be drastically curtailed, if not entirely done away with.

Now I will conclude by saying that, with all its good points, with all its provisions for making India a united and strong federal-unitary State, there are certain matters which could have been more happily provided for.

Now, what is a State for? The utility of a State has to be judged from its effect on the common man's welfare. The ultimate conflict that has to be resolved is this: whether the individual is for the State or the State for the individual. Mahatma Gandhi tried in his lifetime to strike a happy balance, to reconcile this dwandwa (द्वंद्व) and arrived at the conception of the Panchayat Raj. I hope that we in India will go forward and try to make the State exist for the individual rather than the individual for the State. This is what we must aim at and that is what we must bring about in our own country. Because we have a great spiritual and political heritage, we in India are best fitted to bring about this consummation in our own country; and let me say that unless in the whole world the spirit of empire gives place to the empire of the spirit, in the way that Mahatma Gandhi and all seers before him have conceived it, unless this consummation comes about in the world, there will be no peace on earth. At least let us try to bring about this empire of the spirit in our own political institutions. If we do not do this, our attempt today in this Assembly would not truly reflect the political genius of the Indian people. We have been so much taken in by Western glamour. This glamour has been too much with us. We have become the prisoners of our habit forms and thought forms. They have become almost like the old man in Sindbad the Sailor whom he could not shake off. We have become unable to shake off our old habits. But amid all the mist of confusion, there is still the certainty of a new twilight; not the twilight of the evening, but the twilight of the morning — the *Yuga Sandhi* India of the ages is not dead nor has she spoken her last creative word; she lives and has still something to do for herself and for the human family. And that which is now awake in India is not, I hope, an Anglicized or Europeanized Oriental people, docile pupil of the West and doomed to repeat the cycle of the Occident's success and failure, but still the ancient invincible Shakti recovering Her deepest Self, lifting Her head higher towards the supreme source of light and strength, and turning to discover the complete meaning and a vaster form of Her Dharma. In that faith and fortified by that conviction, let us march forward into the future, and by the grace of God, victory will crown our efforts.

Seth Govind Das (C.P. and Berar: General): *[Mr. President, I rise to support the motion moved by Dr. Ambedkar. But at the very outset I would like to make it clear that my support to his motion does not mean that I agree to every thing he has said in his speech. On the contrary, in my opinion his speech has not at all been befitting the beautiful motion moved by him. He has raised many controversial issues and it would have been better if he had not raised them at all. While supporting the motion, I would like to make it clear to you that I do not have at present the enthusiasm with which such a motion should be supported. The motion as also the whole Constitution have been presented to the House in an alien language. There has been yesterday considerable discussion on this question and I would not say much on it. But

*[Translation of Hindustani Speech.]

[Seth Govind Das]

I do feel a regret today that we did not decide the question of national language earlier. Sir, had we taken a decision in this respect earlier, yesterday, there would have been no necessity for you to give an assurance that this Constitution would be placed before this House in the language which would be accepted as the national language and that the articles which would have been passed by the time a decision is taken in this respect would be repassed in our own language. Perhaps you remember, that you had given us an assurance in this respect and that when after your assurance I had raised the question again you had stated in your reply that the original draft of the Constitution would be in the national language. To adopt the Constitution in an alien language is not only a matter of shame for us but it will create many difficulties in the future and will establish supremacy of English in our country. Even during British regime our country produced many learned men who did not know English.

For example, mention of late Pandit Sudhakar Dwivedi may be made. Such a person nowadays is Moulana Abul Kalam Azad who cannot be said to be a scholar of the English language. If we frame our Constitution in a foreign language, even free India, in spite of having its own national language, will have to depend for ever on those who have specialised in English in so far as the constitutional matters would be concerned. Therefore again, I would appeal to you, as I did yesterday, that the original of our Constitution should be in Hindi.

Moreover, this Constitution is incomplete. Many important matters have not been included in it. No doubt article 99, chapter II lays down "In Parliament Business shall be conducted in Hindi or English", but in the whole of the Draft there is no mention about our national language. Of course, we can amend article 99, and specifically mention the language for transaction of business in our Assemblies. But that alone would not do unless we also specifically declare which language shall be our national language. The mere statement that in Parliament business shall be conducted in this or that language is not enough. We have to declare that a particular language shall be the national language of the country. We have also to declare which shall be the national script of the country. In so far as both these matters are concerned the Constitution is quite incomplete.

Perhaps you might have noticed the fact that in the Irish Constitution there is mention of their National Flag. Though we accepted by a resolution this tri-colour flag as our National Flag, we have made no mention of the National Flag in this draft.

We would like that our Constitution should specifically provide that a particular flag shall be our National Flag just as has been done in the Irish Constitution.

Besides, our Constitution is silent about our National Anthem. On many occasions our Prime Minister Pandit Jawaharlal Nehru has stated that the final decision on the question of National Anthem would be taken by the Constituent Assembly. But I would also like that a provision should be included in our Constitution which specifically fixes our National Anthem.

I would also like to express my views on all these matters that have not been provided for by this draft of the Constitution. In my opinion Hindi alone can be the national language of this country. I think there are only a few members of this House who believe today that English can be made the national language of this country. The Hindi-Hindustani controversy has also come to an end, simply because Article 99 of the Constitution refers to "Hindi or English" alone in relation to the transaction of business in our Parliament. Thus the question of Hindustani also exists no more. As far as the members and residents of South India are concerned, I would agree that business here

may be conducted in English also for some years to come. We should not impose anything on them. But Hindi must be our national language and Devnagari our national script.

This Constitution should by a specific provision prescribe the flag that has been accepted before in this House as our National Flag and I suggest that like the Union Jack it should be given a distinctive name of its own. I would like to suggest to you a beautiful name for it. It may be named "Sudarshan". The word "Sudarshan" means beautiful in appearance. While presenting the flag to the House Pandit Jawaharlal Nehru had described in his speech how beautiful our national flag is. I suggest, therefore, that it be named "Sudarshan". There is also a Chakra or wheel on it. The weapon of Lord Vishnu was also known Sudarshan Chakra and hence this name would be quite suitable.

As far as the question of National Anthem is concerned, I would say that 'Vande Mataram' can be our National Anthem. The history of our struggle for independence is associated with Vande Mataram. If it be said that its tune is not fit for orchestrisation I would submit that this is a difficulty which can be overcome by experts in orchestral music. Lyrical songs of Mahakavi Soordas and Meerabai can be sung not only in one but in many tunes. It is therefore wrong to think that 'Vande Mataram' is not suited for orchestrisation. There is no person who has no respect in his heart for Rabindranath Tagore—the King among poets. The verse "Jana Mana Gana" was composed on the occasion of the visit of the late Emperor George the V to India in 1911. The poem offers greetings, not to Mother India, but to the late King Emperor. Every sentiment in it is in relation to the "Bharat Bhagia Vidhata" and who is meant is clear from the expression "victory to the Emperor" (Jai Rajeshwar). It is evident that in a Republic we cannot in our National Anthem offer any greeting to any 'Rajeshwar'. 'Vande Mataram' alone, therefore can be our National Anthem.

Besides its incompleteness, this Constitution also needs many amendments.

For instance, our country has been named as 'India' in this Constitution. As far as the foreign countries are concerned this name is alright. But if a meeting is held in our country which we have to address, shall we address the gathering 'Ay Indians'? When we want to frame the Constitution of our country in our national language, when we want to make it a secular state, neither 'India' nor Hindustan are suitable names for this country. In my opinion, we should give this country the ancient name 'Bharat'.

One thing more I would like to mention here. Ours is an agricultural country. It should have all that is necessary for agriculture. From this point of view the protection of cows is very essential for us. The problem of cow protection is a matter which has been associated with our civilisation from the time of Lord Krishna. To us it is not only a religious or economic but also a cultural problem. Just as we have declared the practice of untouchability an offence, we can also declare that cow-slaughter in this country would be an offence. We should include some provision in our Constitution for this. We learn from our history that only such regimes, whether during Hindu period or Muslim period, as had prohibited cow-slaughter had been popular and successful in our country. History is a witness to the fact that cow-slaughter was abolished here during the rule of many Muslim Kings. It may be said that it would entail a heavy financial burden. I submit, however, that even if we impose a tax on the people and ask them to pay it in order to protect the cows, I am of opinion that they would pay it quite willingly. The bogey of financial difficulties used to be raised before us by the British Government. But I would like that in the matter of cow-protection this bogey should not be raised before us.

We have to examine the Constitution from every point of view and seek to make it complete in all respects. Ours is not a newly born country. It is an ancient country, it has a long history, a heary civilisation and culture. We

[Seth Govind Das]

should frame our Constitution keeping in view all these facts before us. We do not want to place any minority, whether Muslim or other, under any disabilities. But, certainly we are not prepared to appease those who put the two-nation theory before us. I want to make it clear that from the cultural point of view only one culture can exist in this country. The Constitution that we adopt must be in harmony with our culture and that Constitution would be suitable to us which is in our language.

It is after centuries that we have this opportunity of framing our constitution. We must use it well and frame a constitution that is suited to the genius of our land.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. President, Sir, I have a short time at my disposal to deal with this enormous subject and I shall therefore confine myself to one or two specific subjects and reserve my comments on other matters for a latter stage. The first thing to which I wish to draw the attention of the House is the treatment of the expression "States". "States" under the Draft Constitution means almost anything. The idea was to do away with the distinction between the Provinces, the Indian States, the Chief Commissioners' Provinces and similar other things. It was feared, and very naturally feared, at one stage that the Indian States would not align themselves or could not be made to align themselves to the new set up of things, but things have proceeded rapidly and the "States" have quite reasonably aligned themselves or are aligning themselves with the Provinces. I therefore think that this definition of "States" as meaning all sorts of things is no longer necessary. I should think we should revert to the nomenclature of Provinces, Indian States and Chief Commissioners' Provinces and the like. There is no fear of jumbling them together and it is better to treat them as distinct entities. It may have been thought by the eminent draftsmen that unless they did this, there would be some centrifugal forces working, making them drift apart. But, that fear having been allayed, it is now necessary to go back to the original state of affairs. I submit that we are not legislating for the future; we are legislating for the present; though we should have an eye for the future, we must not forget that we are legislating for the present time. In the Draft Constitution we have three distinct items, namely, Provinces, Indian States and Chief Commissioners' Provinces. We should not do away with the present distinctions. If at a future date, these distinct entities would combine into one, as I have no doubt they will, and would be governed by the same or similar characteristics, then will be the time to amend the Constitution and treat them on the same basis.

You would be pleased to find that in Parts VI and XII, "State" means the Provinces. In Part VII, "State" means Chief Commissioners' Provinces. In Part IV "State" means Indian States. In Part III, "State" means a wonderful series of things. By means of article 7, "State" means first of all, the Government of India, secondly it means the Government of the States, meaning all the States, Provinces, Indian States and Chief Commissioners' Provinces, and what is very remarkable, it also means local and other authorities. I suppose these are the municipalities, district boards and other autonomous authorities. I think the passion for a constitutional expression has gone too far. To call a district board, a municipality or a thing of that type as a "State" would be doing violence to language. If English is to remain the language in which the Constitution has to be embodied, I think we should have some respect for the accepted meaning of the word State. A State always means and implies a kind of sovereignty. It may be limited or it may be unlimited. Some kind of sovereignty is implied in the word State. But to call a district board or a municipality a State would be a misnomer. I think the passion for the use of the word 'State' should be checked. If it is a question of nomenclature, if we want to use the same expression for the Government of India and the States, we should distinctly mention the word municipality or district board and not

allow these to be comprehended within the meaning of the all-pervading word 'State'. If we allow the word 'State' to be used for all sorts of purposes, the very purpose of this well-known constitutional expression would be lost. I should think therefore that Honourable Members should look into this while drafting amendments. I find it to be an anomaly and it is difficult to find a substitute for this expression. I ask the co-operation of the Honourable members of this House to find a suitable expression for this. The expression has been defined to mean different things in different clauses. These are articles 1, 7, 28, 128, 212 and 247, according to which the word 'State' means different things. There is a danger of using a well-known expression to mean different things indifferent parts of the same statute. This may lead to confusion. It will be difficult for everyone who will have to deal with the interpretation of this Constitution or to understand this Constitution, to keep his head quite clear as to what is the sense in which the word 'State' has been used at a particular place. I submit, Sir, the ultimate purpose which seems to be lying behind this draftsmanship is the ultimate co-ordination and uniformity of all these different institutions. But at present, there is no need for this kind of indiscriminate use of the word 'State'. I should therefore ask Honourable members to consider in giving notice of amendments, whether it would be better to stick to the old and well known expressions Provinces, Indian States and Chief Commissioners' Provinces.

Then, I have one or two things to say with regard to another subject. Coming to the directive principles of State policy, articles 28 to 40, I think that these are pious expressions. They have no binding force. These cannot been forced in a Court of Law and really, as the Honourable the Law Minister himself candidly admitted, they are pious superfluities. That is the criticism. He has given only one reply that the draft Constitution admits it to be so. I submit it is not a reply, but rather it is a statement of the fact of the criticism. I think every constitutional principle should give a right, and every right should be justiciable in a Court of law and in other places. If there is a right, its violation is a wrong, giving rise, to the well known cause of action. So, there can be no right, the violation of which would not lead to a cause of action. I do not think that people would rush to Court for these things. But, if a constitutional right is defined with a considerable amount of ceremony in a considerably important document like the Constitution of India, and if for the violation of the same no legal remedy is provided, it would be absolutely wrong to insert the so-called rights in the statute. I submit, Sir, these principles are so well known that they do not require to be stated formally in a Constitution, at the same time taking care to see that they are not justiciable in a Court of law. I submit, if these principles of a purely directive character without a binding force be at all introduced in a State. I think there are other principles which should also be equally introduced, as for instance, 'don't tell a lie', 'don't ill-treat your neighbour', and so on and so forth. The Ten Commandments of the Bible and the other commandments from various religions and from practical life should also be introduced on the same principle. As we do not think it practicable to state all these obvious truths, not that these truths are not admissible or are not binding, but because they are obvious. I submit that these directive principles are too obvious to require any mention. If there is any principle which requires to be mentioned, it must be justiciable; it must been forceable in a Court of law. Otherwise, it should have no place in a Constitution. The Honourable Law Minister himself admitted that there is no principle similar to this to be found in any Constitution, except in the Irish Constitution. If a principle of this broad nature has found place only in one Constitution and that Constitution not being the best, I think it is not a safe guide to be followed. I submit that these directive principles should also receive careful attention from the Honourable members; at the time when this thing will come up, these principles should require careful attention.

[Mr. Naziruddin Ahmad]

As the time is very short, I do not wish to take up the time of the House any further but I would reserve my other comments for suitable occasions if and when they arise.

Sardar Bhopinder Singh Man (East Punjab : Sikh): *[Mr. President for a country which has passed through the historic phase of subjugation, it is natural that while framing its constitution, it should have a bright vision. Progress is liable to be impeded, if high ideals are not kept in view. It is an essential for progress. Differences do occur among the people, but on such occasions we have to see with what speed to proceed, which would enable us to reach our destination. In political matters it is wrong to ignore a reality and to take any hasty and unbalanced step, howsoever progressive the step may be. I congratulate the Drafting Committee for visualizing the conditions in their true perspective and solving various problems according to the exigencies of the time. Criticism is being levelled from two points of view. A strong Centre and retention of residuary powers have become object of criticism by some people. Undoubtedly the position of the Congress also has been the same. But under changed circumstances and in the light of old experiences and partition of the country, some people demand a strong Centre. In opposing this the example of Russia is quoted. But it is forgotten that Russia has handed over these powers to her units after a dictatorial regime of 30 years.

I think, slowly and gradually as the country advances socially and economically, different provinces might get this freedom in instalments. In accepting these principles, I do not think it expedient to interfere in the day-to-day working powers of the provinces, which have been handed over to them by the Centre. Clause 226 can be cited as an example. This clause has been discussed in the Assemblies of the different provinces where it has been disapproved.

Another question is the problem of Minorities. While considering this question, the members of the Majority Community are touched. They are influenced by the past happenings. But consider it minutely. Formerly, in our country there used to be the third power which always induced them to become unreasonable. I regret that as a consequent one important minority succumbed to this temptation and adopted an unreasonable attitude and got the country partitioned. But, Sir, this cannot be said regarding other minorities. The minority, to which I belong, has always responded to the call of the country and in spite of their very small number has played a big part in every battle of freedom for the country. Therefore, when I invite your attention towards me, as a member of the minority community, it is not my intention to raise communal issue nor to weaken the nation or the country; rather I say this as a patriot, who feels that to gain the goodwill of the minorities is to add to the glory of the country and to increase the strength of the nation. Now, when there is no third power and the days of the unreasonable attitude of the minorities has come to an end, the responsibility of the majority has increased. The majority has to gain the confidence of the minority. I hope with the attainment of power, the majority will be able to dispel the doubts and misgivings of the minority. It will have to gain the confidence of the minority.]

Shri R.V. Dhulekar (United Provinces : General): *[Now there is no minority here.]

Sardar Bhopinder Singh Man: *[Well, you have already accepted it. You have accepted it in two different clauses on the basis of religion and language. Sir, while I say that in the Draft Constitution problems have been solved according to the exigencies of the time, I shall be failing in my duty, if I did not bring to your notice that in clause 13 relating to the fundamental rights and more particularly the rights of citizenship, such difficult conditions have

* [ ] Translation of Hindustani speech.

been laid down that all the rights have been rendered nugatory. So far as finance is concerned, special consideration is to be given to East Punjab and West Bengal which have been affected very much due to partition. Along with it the clause relating to the citizenship rights should, in my opinion, be made more elastic for the refugees. It would be difficult for lakhs of refugees coming from far off places to appear before a District Magistrate for filing the declaration that they intent to adopt the citizenship of India.

In many cases it is quite possible that the people will have to come from a distance of 40 to 50 miles and they will have to spend a lot for their journey. Therefore, it is not expedient to force the people like this, more particularly in the Punjab where they have no arrangement of a fixed place of residence.

There is yet another and last point. I have observed it since yesterday that endeavour is being made to solve the language problem by giving an emotional tinge. In my opinion, there should be no display of sentiment while solving the language problem. At times it takes a religious turn. In my opinion the Congress stand should be maintained in solving the language problem and the numerous resolutions passed by the Congress previously, regarding the language problem, should stand.]

Mr. Frank Anthony (C.P. and Berar: General): Mr. President, Sir, although Dr. Ambedkar is not present in the House I feel that, as a lawyer at least, I ought to congratulate him for the symmetrical and lucid analysis which he gave us of the principles underlying our Draft Constitution. Whatever different views we may hold about this Draft Constitution, I feel that this will be conceded that it is a monumental document at least from the physical point of view, if from no other point of view. And I think it would be churlish for us not to offer a word of special thanks, to the members of the Drafting Committee, because I am certain that they must have put in an infinite amount of labour and skill to be able to prepare such a vast document.

Dr. Ambedkar referred to the fact that while there was a necessary minimum of rigidity and legalism in a federal constitution, an attempt had been made to give it the maximum of flexibility by accommodating as much as possible local needs and local circumstances. He also pointed out that this flexibility had not been over-carried to the extent of encouraging chaos. For instance, on fundamental matters an essential unity and integration had been retained by having uniform laws, by having a single and integrated judiciary, by having a Central Administrative Service. Dr. Ambedkar also indicated that the Constitution sought to strike a balance between giving the Centre too much or too little power. He felt that it is a salutary principle not to over-weigh the Centre with too much power under which it might crash. Sir, I know that several Members in this House will not agree with me. I, also, regard as a salutary principle the need for not giving too much power to the Centre. Constitutionally, that is an unexceptionable principle, but in applying it, we must adapt it to local needs and circumstances, and, if we are frank with ourselves, we must admit that in this vast country of ours there is an inherent potential of divergence and disintegration. Because of that I feel that the maximum possible power that can be given to the Centre must be given to the Centre in the interests of the country, in the interests of the integrity and cohesion of the nation. I feel that in three particular matters there should be Central control. I do not know to what extent some of my friends will agree with me here.

The first matter in which control should, I feel, be by and from the Centre is with regard to the Police Administration. I feel that the Police Services throughout the country should be controlled from the Centre. You may not have absolute control. You may qualify it. But there should be some measure of control from the Centre. We have to remember that there was such a thing

[Mr. Frank Anthony]

as the Indian Police Service. It was an all-India service, the members of which filled key appointments in the Police Administrations in the different provinces. In spite of that single unifying link, the Police Administrations in the different Provinces had varying standards. If we are frank, we will admit that in some provinces the Police Administration set general standards of efficiency and integrity. At the same time, we have also to admit that in certain provinces the standards set by the Police Administrations were not far removed from chronic inefficiency and chronic corruption. While we have sought to secure cohesion and integrity, with regard to our judiciary, with regard to the Central Administrative Service (I do not know to what extent members of the Central Administrative Service will be appointed to key positions in the Police Administrations of the different provinces), whatever integrity and cohesion we may secure by having a single judiciary, whatever integrity and cohesion we may secure through the Central Administrative Service, I feel that integrity and cohesion will be largely stultified if the police Administrations are left at the mercy of the different provincial Governments. I might add here that I feel this measure of cohesion by central control, to some extent at least, is vital. It goes to the roots of a healthy and stable society in our vast country.

The second matter on which I should like to see control from the Centre is education. I know that I am touching on a very controversial point, that I will be criticised any my suggestion will be completely repudiated by those who, I feel, think—and only think—in provincial terms. At the same time, I feel that my proposal that education throughout the country should be controlled from the Centre will have, the approval and endorsement of eminent educationists of men, of vision and of men with statesmanship. What is happening today? On the threshold of independence (I cannot help saying it) certain provinces are running riot in the educational field. Provinces are implementing not only divergent but often directly opposing policies. And it is axiomatic that a uniform, synthesized, planned education system is the greatest force to ensure national solidarity and national integration. Equally, divergent, fissiparous, opposing educational policies will be the greatest force for disintegration and the disruption of this country. I regret to say, but it is true, if we will only admit it, that educational policies conceived in narrow provincial and even parochial terms are today menacing us with the inevitable danger of raising cultural barriers, mental stockades, of building educational walls, over which it will become increasingly impossible to look. I feel very strongly on this subject, because I have not a little to do with education. I have a great deal to do with education from an all-India point of view, and I feel that if a policy of *laissez faire* at this stage is conceded or accepted from the Centre, then we are trifling with a force which in its potential for mischief, in its potential for disrupting this country is much greater than any disruptive tendency we have faced from religious communalism.

Finally, Sir, the subject which I feel should be also controlled from the Centre is not negligible subject of health. Education and health are, to my mind, the two paramount problems which this country is faced with. And we cannot begin to liquidate ill-health and malnutrition, unless we do it on a uniform scale. I do not believe that we can begin to touch this, perhaps our greatest problem, by allowing it to rest at the mercies of the different provincial Governments which are, some of them, bound to have halting policies; some of them are bound to have disparate policies, some of them are bound to have divergent policies.

Lastly, I wish to endorse the sentiment expressed by Dr. Ambedkar when he commended the provisions on behalf of the minorities. I know that it is an unsavoury subject (after what India has gone through) to talk of minorities or in terms of minority problems. And I do not propose to do that

I do not propose to commend these minority provisions, because they have already been accepted by the Advisory committee; they have been accepted by the Congress Party; they have also been accepted by the Constituent Assembly. But I feel I ought to thank and to congratulate the Congress Party for its realistic and statesman like approach to this not easy problem; and I feel we ought particularly to thank Sardar Patel for his very realistic and statesman like approach. There is no point in blinking or in shirking the fact that minorities do exist in this country, but if we approach this problem in the way the Congress has begun to approach it, I believe that in ten years there will be no minority problem in this country. Believe me, Sir, when I tell you that I, at any rate, do not think that there is a single right minded minority that does not want to see this country reach, and reach in the shortest possible time, the goal of a real secular democratic State. We believe—we must believe—that in the achievement of that goal lies the greatest guarantee of any minority section in this country. As Dr. Ambedkar has said, we have struck a golden mean in this matter. The minorities too have been helpful. There is no doubt that we went more than half-way to meet the Congress Party and the Congress Party also, although it is very difficult for a member who is not a member of a minority community, to appreciate the difficulties and anxieties of a minority, has done that and we are deeply grateful to them for it. I believe that in these provisions we have struck a mean—a mean by which through a process of evolution, through a process of natural and easy transition, if we all play the game (as I believe we will) this country will achieve the only goal which we all want to achieve, namely, a goal where we think of ourselves as Indians first, last and always. One of the realisations which impressed itself very strongly on my mind when I attended, recently, the Commonwealth Parliamentary Conference was that the eyes of the world are on India. People realise that when India comes into her own, the balance of power, industrial, economic and even military will be affected throughout the world. We all believe that India will come into her own. I am one of those who believe that India will attain her fullest stature in a secular democratic society. There may be short comings and imperfections in this Constitution which are inevitably the result of necessary adaptation. But I believe that in this Constitution we have both the opportunity and the guarantee of a secular democratic society in this country.

Finally, Sir, I wish to say that it is not so much on the written word of the printed Constitution that will ultimately depend whether we reach that full stature, but on the spirit in which the leaders and administrators of the country implement this Constitution of ours and on the spirit in which they approach the vast problems that face us; on the way in which we discharge the spirit of this Constitution will depend the measure of our fulfilment of the ideals which we all believe in.

Shri Krishna Chandra Sharma (United Provinces: General): I join in the pleasant task to compliment Dr. Ambedkar for the well worked out scheme he has placed before the House, the hard work he was put in, and his yesterday's able and lucid speech.

Sir, in considering a Constitution we have to take note of the fact that the Constitution is not an end in itself. A Constitution is framed for certain objectives and these objectives are the general good of the people, the stability of the State and the growth and development of the individual. In India when we say the growth and development of the individual we mean his self realisation, self-development and self-fulfilment. When we say the development of the people we mean to say a strong and united nation.

Sir, ours is a Democratic Constitution. Democracy involves a Government of, by, and for the people. In democracy, the combined wisdom of the people

[Shri Krishna Chandra Sharma]

is regarded as superior to that of any single king or tyrant or indeed to a group of men. Moreover, democracy emphasizes the supreme good as being the welfare of the people. Political institutions are justifiable only in so far as they lead to this result and not by any pomp and show attached to them. These being the fundamentals of democracy, we have to judge whether the Constitution placed before us will make India a strong united nation with the possibility of self-fulfilment, self-development and self-realisation of the individual.

Sir, India needs wealth and when we say India needs wealth, we mean that India is a poor country and therefore should be strong enough to compete with any great country in the world and erect it on a footing of equality. Now, there was a time when wealth was regarded to consist in gold and silver or some other resources of the country. In the modern context, the wealth of a nation consists primarily in the limbs of its young men, their character and brain and their working capacity. Now, in this Constitution, there is not a single item or provision anywhere to make the people work or to make them grow. You have got directive principles. There, the State endeavours to give primary education and to find work and employment. The State does not take the responsibility to make the people work, on the principle that he who does not work, neither shall he eat. This is an important question. We should have provision for enforcement of work for able-bodied citizens. So Sir, in the directive principle which a learned friend of mine has criticised, there is no legal obligation imposed on the State to fulfil the rights given in the Constitution. I suggest that we make a provision that any law made in contravention of these principles shall to that extent be void. This will not affect the present position. It will give jurisdiction to a court of law, though only a negative right to the people to move a court that any law which goes against the interests of the people, against providing primary education for the children and against providing work and employment to the people should be declared void. The court will have jurisdiction to declare that such and such a law is void, because it contravenes the general principles laid down in Chapter IV.

The second thing I wish to emphasise in the directive principles is that for the growth of democracy, a free and healthy public opinion is necessary. The position is that in mediaeval times one dared not think freely but in these enlightened times one can dare think freely, but he cannot. Look to the spectacle of the man who by black-marketing and by doing things a decent man will not do amasses fabulous wealth. He buys a dozen of educated women, roams about in the world and gets control over twenty Provincial dailies. He by unscrupulous propaganda gets hold on the mind of the people and passes as a benefactor of humanity. Do you think this is democracy? Do you think there is any possibility for the growth of an honest, independent citizen in a country where such a thing is possible? I, Sir, with all the force at my command protest that such a thing should not be allowed to happen in this great country. You should and you can make it impossible for such things to happen by preventing the abuse of wealth or the amassing of wealth in the hands of individuals to that extent. You should do this control of the Press and provide for a healthy and independent press so that effective independent opinion should be possible. For instance, I would refer to the provisions of Chapter II of the Russian Constitution. There are two articles there—14 and 18. They lay down that the State will compel every able-bodied citizen to work and further in another article it is laid down that the Press would not be allowed to prejudice or affect the growth of effective independent opinion. This effective opinion is the backbone of democracy.

Having dealt with directive principles, I pass on to Chapter XIV relating to minorities. As I said, this great country needs unity. The object is a united nation. Much has been said about the rights of minorities. I do not think our minorities are minorities in the real sense of the term or the classes or groups accepted by the League of Nations. We all belong to the same race. We have all lived in this country for centuries, for thousands of years. We have imbibed a common culture, a common way of living, a common way of thinking. Thus I do not understand the meaning of giving these special privileges in Chapter XIV. It creates statutory minorities and to say that the thing will last for ten years only is to forget the lesson of the past. What happened in the past? You gave certain rights and privileges to Muslims as such and those rights and privileges, it was hoped, would in the course of time automatically cease, that the Muslim community would realise the futility of those special privileges and would associate itself with the common people of the land and give up those privileges. But the result was the partition of the country. Once you give to a certain group of people, not on their functions, not because they are doing something for the country, but simply because they belong to a certain group or class, certain special privileges, you perpetuate what is generally the fault in democracy, namely, the giving rise to of groups or classes which would do things detrimental to the country as a whole, things which would serve their selfish ends, or the ends of the groups or classes they belong to Cliques and intrigues will do neither any good to the groups or classes they represent nor to the country, but in the name of that group or clique they will serve their own selfish ends. While it would stand in the way of a united nation it will not do any good to those classes or groups and would perpetuate what is, as I said, generally the defect in democracy. I would therefore suggest that this Chapter better be altogether omitted and if there are any safeguards, or any encouragement, necessary for the backward classes or certain other classes, there might be other means, namely, giving scholarships to deserving students, giving other financial help, opening institutions and other facilities which are necessary for their amelioration and lifting up; but to perpetuate division in the body politic, to perpetuate division in the nation, would be detrimental to the healthy growth of the nation and would do an incalculable harm to us and our posterity.

Shri T. T. Krishnamachari (Madras : General): Mr. President, Sir, I am one of those in the House who have listened to Dr. Ambedkar very carefully. I am aware of the amount of work and enthusiasm that he has brought to bear on the work of drafting this Constitution. At the same time, I do realise that that amount of attention that was necessary for the purpose of drafting a constitution so important to us at this moment has not been given to it by the Drafting Committee. The House is perhaps aware that of the seven members nominated by you, one had resigned from the House and was replaced. One died and was not replaced. One was away in America and his place was not filled up and another person was engaged in State affairs, and there was a void to that extent. One or two people were far away from Delhi and perhaps reasons of health did not permit them to attend. So it happened ultimately that the burden of drafting this constitution fell on Dr. Ambedkar and I have no doubt that we are grateful to him for having achieved this task in a manner which is undoubtedly commendable. But my point really is that the attention that was due to a matter like this has not been given to it by the Committee as a whole. Some time in April the Secretariat of the Constituent Assembly had intimated me and others besides myself that you had decided that the Union Powers Committee, the Union Constitution Committee and the provincial Constitution Committee, at any rate the members thereof, and a few other selected people should meet and discuss the various amendments that had been suggested by the members of the House and also by the general public. A meeting was held for two days in April last and I believe a certain amount of good

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work was done and I see that Dr. Ambedkar has chosen to accept certain recommendations of the Committee, but nothing was heard about this committee thereafter. I understand that the Drafting Committee—at any rate Dr. Ambedkar and Mr. Madhava Rau—met thereafter and scrutinised the amendments and they have made certain suggestions, but technically perhaps this was not a Drafting Committee. Though I would not question your ruling on this matter, one would concede that the moment a Committee had reported that Committee became *functus officio*, and I do not remember your having reconstituted the Drafting Committee. The point why I mention all these is that certain aspects of our Constitution have not had the amount of expert attention that was necessary, the amount of attention that could have been provided to it if a person like Mr. Gopalaswami Ayyangar or Mr. Munshi or certain other persons had attended the meetings all through.

Sir, I would draw your attention to one aspect of the Draft Constitution, *viz.,* the financial provisions in the Constitution. You, Sir, appointed an Expert Committee. Well, to my mind, the way in which the Committee worked was not altogether satisfactory, though the members of the Committee were eminent enough. I had the opportunity of giving evidence before the Committee and I did come away from that meeting feeling that the Committee was not seized of the seriousness of the matter they were entrusted with, nor were they competent to advise the Drafting Committee in regard to the subjects referred to them. Sir, the proof of the pudding is in the eating. I have with me a copy of the report of the Expert Committee, and I am not satisfied with it. Circumstances happened that the House could not discuss the report of the Expert Committee and I believe that the Drafting Committee were more or less left to decide for themselves whether those recommendations were worthy of being incorporated or not.

Sir, I have a few remarks to make in regard to the report of the Expert Committee. The Expert Committee did not seem to be sure of itself. Actually, though the terms of reference which you, Sir furnished them were wide enough, wide in the sense that going on the experience of the Government of India and the provincial governments during the last ten years they were competent even to suggest alterations of the various heads in the lists enumerating Central and State subjects if necessary, they did not attempt to seize the opportunity that you furnished to them, but on the other hand they have mentioned explicitly in their report that they preferred in the circumstances that exist in this country to adopt the *status quo* rather than attempt to make any revolutionary changes in the financial structure of the country. That, Sir, I am afraid, was very unfortunate.

The second point on which I would like to touch is about paragraph 49 of the report with regard to the items in provincial list, Nos. 48, 49 and 51., 51 relates to agricultural income-tax. 48 and 49 relate to Estate Duty and Succession Duty on agricultural land. They felt that in the present context of things, the difference between agricultural property and non-agricultural property had no validity. I think they were quite right, but they have not had the courage to suggest that in the Draft Constitution this distinction which was imported for specific reasons into the Government of India Act should be done away with. I propose Sir, if the House would permit me, to table an amendment seeking to do away with this distinction. Not that I feel that the powers of the provinces should be encroached upon but I feel that the only way in which the revenues of the provinces could be augmented is by unifying income-tax, whether it is agricultural or non-agricultural property, unifying Estate Duty whether it is agricultural or non-agricultural property and so on and making the advantage of such unification available to the Provinces.

Sir, one other recommendation of the Expert Committee is, I am afraid, rather mischievous. That is, they have suggested in regard to Sales Tax—

which is item 58 in List 2—that the definition should been larged so as to include Use Tax as well, going undoubtedly on the experience of the American State Use Tax which, I think, is a pernicious recommendation. I think it finds a reflection in the mention of Sales Tax in Item No. 58 which ought not to be there.

The other recommendations of the Expert Committee like increasing the share of income-tax to the provinces from 50 per cent to 60 per cent and incorporating in the pool the proceeds of Corporation Taxes as well as taxes on Federal emoluments have been more or less dismissed by the Drafting Committee.

So I do feel that either the Drafting Committee was not competent to examine even the half-hearted recommendations made by the Expert Committee or they felt that it would be better to tread on safer ground and adopt the *status quo* which idea, I think, more or less dictated the decisions made by the Expert Committee itself.

Then I come to a new provision that has been made in the financial sections of this Draft Constitution, *viz.,* Article 260. Article 260, Sir speaks of a Finance Commission. In fact, Sir, in the terms of reference that you had sent to the Expert Committee you yourself made that suggestion, but I do not know if it is at all necessary for us to incorporate in the constitution an Article like 260 which is mandatory only in regard to one particular aspect of it. namely, the appointment of a Commission. The duties assigned to it, to arbitrate between provincial units and the Centre and also to act as a sort of Grants Commission, can actually be done by any Commission approved by any law enacted by Parliament. Parliament is empowered to appoint a commission of this nature so long as the recommendations of the Commission are not mandatory on the Central and Provincial governments which is the position as the wording of Article 260 as it now stands. So what I really feel would be wiser to insert it, in view of the fact that we have had no time to examine the financial implications of this Constitution and in view of the fact that we could not apportion the heads of income properly between the provinces and the Centre, a provision in the Constitution itself for a commission which will go into the entire financial structure of the country and make recommendations even in regard to changing the heads in the lists assigned to the provinces and the Centre. As a matter of fact, mention has been made by the Expert Committee that it should be done, though they have not gone further into it. What I would like to have in this Constitution is that a Finance Commission should be appointed and that Commission should be empowered to make recommendations to make alterations in both lists 1 and 2 and that the recommendations of that Commission should be adopted as a part of the constitution and should be obligatory on the Government of India and the provincial governments without going to the needless process and trouble of an amendment to the constitution. I do not know, Sir, if such a thing is possible but I see that the mover of this motion is not here—probably he may have been able to enlighten me on this point if he were here—but I do feel that an attempt should be made to insert a provision of this nature in the Constitution. I would only say, Sir, when dealing with this particular aspect of the matter that I feel that the defects in regard to the distribution of the financial powers in the 1935 Act have not been properly appreciated and no serious attempt has been made to devise methods to increase the revenues of the provinces which do badly need additional resources and to have a more rational and equitable system of taxation in this country.

Sir, one or two other aspects I would like to touch on before I sit down is this. Sir, the Mover of the motion mentioned about the need for a strong Centre. I find that that sentiment has been echoed by Mr. Anthony. Well, I think in the uncertain state of events which lie ahead of us and in view of the fact that the main objective of our having achieved freedom is to better the

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lot of the lowliest in this country, namely, to improve the economy of the common man, the only way in which that can be achieved is to take certain amount of powers to the Centre which can direct the steps to be taken to this end. I am all for a strong Centre, if the provinces' powers could be preserved intact. It is also necessary, Sir, as I find from a letter written to me recently by a former member of the Government of India and a well-known lawyer who has complained, that Provinces as they are today are merely going off the rails and are imposing all kinds of parochial and provincial restrictions in regard to the internal economy of the province and he has doubted whether it was wise to have a federal system of Government in the present state of things and whether we should not go back to the unitary system. That is there and when we look at it from that point of view, we feel that a strong centre is necessary. I would also say that in certain matters Central direction may probably be useful. My honourable friend Mr. Jagjivan Ram has found a lot of difficulty in implementing his labour policy because of the imperfect power that is vested in the Central Government. Actually I see that Dr. Ambedkar has said that Article 60 is now so worded that the power of the Central Government in regard to concurrent subjects will also extend to giving executive directions which are non-existent at the present time. But I do not think, as I read the Article 60, the power is explicitly there but that is a point which Mr. Jagjivan Ram has often mentioned and I always felt that in regard to labour matters, it is better that a larger amount of power is vested in the Centre both for purposes of co-ordination and also because in the provinces the various vested interests prevent progressive labour legislation being undertaken. So, I would perhaps suggest either an explicit mention in Article 60 that in regard to concurrent subjects the power of the Central Government to give executive directions will also be there or to put labour legislation in List 1.

One other matter in which perhaps I had some sympathy with Mr. Anthony's suggestion, though I feel I must resist all other suggestions he has made in regard to strengthening the Centre, is in regard to public health. There are certain aspects of public health where the Central Government could do a lot of good. Actually, disease in this country is universal. It is not the main privilege of Madras, Bombay or U. P. and therefore in the matter of public health legislation and also in the matter of maintaining institutes for purposes of research in health, I think some amount of power could be given to the Centre and therefore, that item could come into List 3. But, Sir, while I feel that a strong Centre is necessary, because I visualise the most important task before us is the implementing of the economic objectives, I am rather disinclined to pursue that idea to its logical end, because of what happened yesterday here. Sir, I assure you that I am not going into any controversy, because a controversy can be raised at the proper time. We found yesterday the display of a certain amount of intolerance, of a certain amount of fanaticism, of a certain amount of thoughtlessness on the part of people whom I always regarded as being highly intellectual, highly developed in the matter of aesthetic sensibilities and civilization. I refer, Sir, to a type of imperialism that seems to threaten us today which perhaps driven to its logical end will bring into being a type of totalitarianism and its reaction on the rest of the units of the Union of India to be. Sir, I refer to this question of language imperialism. There are various forms of imperialism and language imperialism is one of the most powerful methods of propagating the imperialistic idea. It is no doubt true that a large portion of this country do speak a particular language. If I were perhaps a Hindi speaking person, I would certain visualise the days when the Hindi-speaking areas would be a powerful area, well-knit with United Provinces, the northern portion of C.P. portions of Bihar, Matsya Union, Madhya Bharat, Vindhya Pradesh, all together reproducing, Sir, the greatness of the Asokan Empire, the Empire of Vikramaditya and that of

Harshavardhana. It is a thing which just tickles your fancy and if you happen to be a native of the area your imagination more or less takes you to the glories of the past which one seeks to bring into being. But what about the other areas? What about the level of education that we have now attained in those areas and the ideas of freedom that have grown with it? Believe me, Sir, that the hatred that we in South India had for the English language has now gone. We disliked the English language in the past. I disliked it because I was forced to learn Shakespeare and Milton, for which I had no taste at all, but today it is no longer a matter of duress. But if we are going to be compelled to learn Hindi in order to be a member of the Central Assembly in order to speak out the grievances of my people, well, I would perhaps not be able to do it at my age, and perhaps I will not be willing to do it because of the amount of constraint that you put on me. I shall deal with this particular subject later on at the appropriate time but I do feel, Sir, that my honourable friends of the U.P. and C.P. and portions of Bihar will take note of the fact that while they are enthusiastic for their own language, and while they want the English language to be wiped out of this country, they must also recognise that there are a number of people all over India who do not understand the Hindi language. Sir, my honourable friend yesterday resorted to a simile, to strengthen his case. I am accustomed to hear similes, I have a friend who is extraordinarily good in similes and parables, who is somewhere near here now. But what about the simile used by my friend? My honourable friend said: "Are there not a number of people who do not understand English, who trust the people who speak the language?" Yes, there are a number of people in this House and elsewhere who do not understand English. It may be my neighbour from Madras does not understand English and he is prepared to trust me, but that does not mean that a person in South India would be content to trust somebody in U.P., however good Pandit Bal Krishna Sharma may be and whatever assurance I may carry forth from Delhi to the South. I know he is an ideal legislator, has an aesthetic soul, is a poet and all that sort of thing—it does not mean that merely because in one particular area there are people who cannot understand the language, they should be prepared to trust those people, who understand it and who are a thousand miles away to carry on the administration. Has anybody in this House given one moment of thought to those of us of this House, who have been merely gaping unintelligently because we could not understand what is being said? It may be, as my honourable friend, Mr. Satyanarayana, who propagates Hindi in South India without effect told me, that there was not much substance in the Hindi speeches that have been made; perhaps it is so, but I would like to know what has been said; I would like to counter the points made. I felt completely helpless in a situation where I am bound to have brought to bear all my faculties to understand what has been said for the benefit of the future of my country, for the benefit of the future of my people. This kind of intolerance makes us fear that the strong Centre which we need, a strong Centre which is necessary will also mean the enslavement of people who do not speak the language of the legislature, the language of the Centre. I would, Sir, convey a warning on behalf of the people of the South for the reason that there are already elements in South India who want separation and it is up to us to tax the maximum strength we have to keeping those elements down, and my honourable friends in U.P. do not help us in any way by flogging their idea 'Hindi Imperialism' to the maximum extent possible. Sir, it is upto my friends in U.P. to have a whole-India; it is up to them to have a Hindi-India. The choice is theirs and they can incorporate it in this Constitution; and if we are left out, well, we will only curse our luck and hope for better times to come.

Mr. President : We shall now adjourn for lunch. Before we adjourn, it has been pointed out to me by the office that some difficulty is being experienced

[Mr. President]

in distributing papers because some members have not reported their arrival or given their addresses. I request the members to leave their addresses in the notice office so that papers may be sent to them. Those who have not done so will kindly do so.

We shall adjourn now till Three of the Clock.

The Assembly then adjourned for lunch till Three of the Clock.

The Assembly re-assembled after lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri Biswanath Das (Orissa : General): Mr. Vice-President, Sir, I rise to thank the Honourable Dr. Ambedkar for the brilliant analysis of the Constitution that he presented to the Constituent Assembly. Sir, I equally thank his colleagues who laboured hard for six long months to forge the Constitution that is presented to this House. While paying respect that is due to them, I will be failing in my duty if I do not state here that the Drafting Committee has exceeded the terms of the reference and power that was vested in them by the Honourable House. Sir, the House, if I remember aright, decided to refer the decisions to the Drafting Committee to be presented in the shape of a Bill and a subsequent motion by an Honourable Friend in this House gave them the option of making certain changes which might be found necessary in the course of the drafting changes flowing from decisions. But, Sir, in the course of drafting the Bill they have not only assumed to themselves the powers of the Drafting Committee but also the powers of a Select Committee—nay—something more—the Constituent Assembly itself. They have made certain changes for which they had no authority. Reference has already been made to the question of bringing in new changes in the Constitution for which they had no authority, questions which were not discussed nor were decided in the Constituent Assembly. Certain changes they themselves have made which they admit in the report and the changes have been marked and new questions have been introduced. Three Committees were appointed either by the House or by the Honourable the President—the Sarker Committee, The Centrally Administered Areas Committee and the Minority Committee. I must state here that we have not discussed those reports nor has the Assembly come to any decisions and yet important changes have been made not in terms of reference or the recommendations of the Committee but in certain cases something more than what the Committee have recommended; especially in this case need I draw the attention of the House to the recommendations of the Sarker Committee involving very important questions, *viz*., the financial relations between the Centre and the Provinces as also among the provinces themselves. I must frankly say that the Drafting Committee had no jurisdiction and all that has been done is done without the power or authority of this House.

Similarly, changes have been made in the Constitution without a decision of the Assembly. Sir, I will, having stated so far about the decision taken by the Drafting Committee itself, come to the question of the Draft Constitution. Sir, the procedure adopted by the Honourable President regarding discussion of the Draft Constitution is, I am afraid, peculiar. It is neither the procedure that relates to a Bill, nor the procedure that has been followed in other Constituent Assemblies. We constituted the Drafting Committee on the 10th of August 1947. After six months of labour, a report was presented to the Honourable Members of this House. The report was circulated about the middle of February 1948 and a very short time was given for Honourable Members to place their views before the Committee. I must frankly confess that not only was the time given to us short, but the time that was chosen for offering suggestions was very inopportune, in the sense that both the members of the Central Legislature as also members of the Provincial Legislatures were busy with their Budgets. Therefore, the attention that was necessary and that ought to have been given to such an important thing was not given for no fault of the members themselves. Thus the help which the Drafting Committee must have received or has received necessarily remains very small and inadequate. Having said so much about the time given to us for submitting our suggestions, I pass on to the other question that was raised by Mr. T. T. Krishnamachari.

[Shri Biswanath Das]

Not all the members of the Committee have taken part in the discussions of the Drafting Committee, not even I believe the majority of the members have given their joint thoughts. Therefore the decision of the Drafting Committee boils down to be the decision of a few Honourable friends. They may be eminent in their own way, but we want more minds, more thought and more discussion on this question. There was not enough, I claim. A year passed without much work and a lot of work could have been done and there would have been no complaint today either on the score of taking consultations or taking help of members or placing of the views of different members of the Constituent Assembly before the Drafting Committee. It is a matter to be regretted that even today we do not have before us the decisions or the discussions of the various legislatures. We claim here that we are delegates representing provinces and we do not know what the provinces have decided and what their views are. If we could know them, this would certainly give us good guidance in giving our decisions. Let me hope that at least before the actual Bill is taken for discussion, we will have before us the discussions or decisions of all the provincial legislatures whom we have the honour to represent in this Constituent Assembly.

It behoves me to place my protest here that a Bill of this importance has not been thoroughly scrutinised by a sort of Select Committee taking into consideration the various representations made from all over India and also views expressed by the members of different provincial Legislatures. If such an occasion had been given, it would have been welcome. If a session of the Constituent Assembly had been held in the month of May 1948, sitting and discussing, say, for about a week or so, the matter could easily have been referred to a Committee which would have taken the place of a Select Committee, and they would have thoroughly scrutinised the various Sections by this time, taking into consideration the views of different organisations. I feel that due scrutiny has not been made by the members of the Drafting Committee, nor is this House given necessary time to discuss the whole question, nor even the opportunity to place the views of members properly and fully either before the Select Committee or before this House. I must again state that there was a meeting of four committees in one place—that was about 9th or 10th April 1948—a combined meeting of the Drafting Committee, the Union Powers Committee and the Union Committee and the Provincial Constitution Committee. I must frankly state that the decisions that were arrived at have not been accepted by the Drafting Committee. Therefore, is this a Drafting Committee , or a Select Committee, or an all-powerful Constituent Assembly? It remains for me, no, not for me, but for the Honourable Members of the House to decide. Under these circumstances, I do not at all feel happy over this performance.

One other item I will state before I resume my seat. It is an important one. I refer specially to the question of fundamental rights. Fundamental rights, specially Section 7, lays down that any Act which comes into conflict with the fundamental rights will be swept away, and the same Section defines the law to include Ordinances, Rules, Regulations and the like. That means that all the existing laws, provincial, central as also parliamentary laws that are in operation including Regulations and a huge number of Codes will be swept away by the operation of the justiciable portion of the fundamental rights. I am asking my Honourable friend Dr. Ambedkar whether he has examined thoroughly the implications and effect of these fundamental rights on the existing laws, both central and provincial. Are you going to create chaos in the country? I believe it was left either to the Secretariat of the Constituent Assembly or to the Central and Provincial Governments to determine the effect and implications of these laws. The British Government before

it passed a Constitution Act undertook an examination as to the implications of the Constitution on the existing laws, and after being satisfied with it, they provided three different stages. The first stage was provided in the Act itself, that the existing laws shall continue in operation. The second was taken by allowing authority to take to adaptations of the Acts that are in existence and the third stage was in providing for the issuing of Orders in Council. Nothing of this kind has been attempted here nor an examination of the effect upon existing laws undertaken. It was left to me to protest against this in April 1947. I said this is unfair to the country and would bring trouble and misery. An examination was promised, and I state that this examination has not yet been undertaken, at least to my knowledge. This examination should be taken up in right earnest. I hope my speech proves that the necessary discussion has not been possible.

Shri B. Das (Orissa : General): Mr. Vice President, Sir, at the outset I must pay my tribute to the Drafting Committee that did a greatly arduous work and put into shape and form the Constitution Bill which we are considering today and which we have to alter according to our will, so that a proper sovereign Constitution will be designed for India. While I pay my tribute to Dr. Ambedkar and his colleagues, I must also pay the tribute that your Advisers deserve. Our great Constitutional Adviser, Srijut Narasingha Rau has rendered yeoman service in assisting the Drafting and other Committees in bringing the Constitution to this safe anchor. We are also indebted to our friend Srijut Narasingha Rau for raising our international status at the U.N.O. While we are still a Dominion, and I always think I am still a slave of England, my friend went there, raised our status and dignity and showed the West that India can contribute to world peace and happiness.

Now, Sir, I agree with some of the draft articles of this Constitution Bill. I may not be able here within the short time at my disposal to state the issues where I agree. I would rather start by enumerating the points where I disagree with the draft constitution and where the House must deliberate and so change the draft that the Constitution is truly for Indians and not based on past traditions and past connections with the British.

Now I will take the new draft of the Preamble to which I strongly object. The Objectives Resolution that we adopted in January 1947 stated that the Constitution is "Independent Sovereign Republic". On 21st February 1948 my friend Dr. Ambedkar changed it into "Sovereign Democratic Republic" but we find in another note of 26th October 1948 it has been changed into "Sovereign Democratic State." I do not know how this Drafting Committee can change the Objectives Resolution that this House passed in January 1947. There we have agreed unanimously that the Preamble should be "Independent Sovereign Republic", and I am one who will oppose the amended draft Preamble very strongly.

There are certain points here in which the House never gave its opinion. They were controversial. They were allowed to stand over, but still I welcome the new amendment to article 5 that the Drafting Committee has suggested. It should be further improved. I am referring to the definition of "citizenship". It requires closer examination. The Drafting Committee in its first draft was hesitant but in another suggested amendment they have introduced a better draft. It needs further improvement.

Regarding Fundamental Rights, there were two or three points where the House did not reach any conclusion. I do hope that we will be allowed sufficient time to discuss those without accepting the Drafting Committee's recommendations. One thing I am happy about is that the women of India have won a position which women in no other independent nation enjoy. They have secured equal rights, equal privileges, equal opportunities, with men and that is one great achievement in Fundamental Rights of our citizens.

[Shri B. Das]

Sir, I very strongly oppose the idea of nominated Governors. I do not know why the idea of those in which my friend Dr. Ambedkar is participating—the Government—should come into the drafting of this Constitution Bill. At no stage have we found any representative of our Cabinet making here that suggestion. Governors should be elected by Provincial Assemblies and they need not have the residents of that province to contest the Governorship. We do not want to hand our powers to the Government, be he the President or any other able Administrator including Dr. Ambedkar. We do not want the Governorships or Ministerships to be confined to a few individuals and their associates.

My greatest objection—and one on which the whole Constitution Act will founder—is in relation to financial allocation as between the provinces and the Centre. I am surprised that a brave man like my friend Dr. Ambedkar is fighting shy to discuss the finances of the Provinces and piously recommend that for five years after the promulgation of the Constitution Act we should not disturb the financial allocations. Very, very surprising indeed it was to me! It was the same attitude that the Colonial Government, that our former Government, took, and the supporters of that Government took in 1935. The foreign rulers wanted a top heavy central administration and starved the Provinces. I am surprised today to see that the same thing has been in the mind of the Drafting Committee! Of course, I concur with my friend Srijut Kamath that more Congress-minded men should have been in the Drafting Committee so that they will represent the principles and the thoughts of the people who have brought this Constituent Assembly to fruition and whose desire could have been reflected in the draft.

I am grateful to Mr. T. T. Krishnamachari for speaking out strongly. I find that in public health the range of expenditure in all the Provinces varied from 5.8 and 3.1 percent of the total expenditure. This was before the war in 1935-38; this is so after the war in 1947-48. Due to inflation, the expenditure has gone up three times in all the Provinces and at the Centre. This is a point which every province should examine and take note of. Poor provinces like Orissa and Assam are going to examine the consequences of such a statement from Dr. Ambedkar. We want finances re-allocated so that provinces have resources to give effect to the second sentence in the Preamble:

"Justice,—social, economic and political."

Sir, I do not care for political justice. I want social and economic justice from this House for the people. And if the Honourable Ministers are found hostile to it, we will compel them to accept the majority view of the House and do justice—social and economic, —to the teeming millions placed under provincial administrations.

Shri Lokanath Misra: (Orissa : General): Mr. Vice-President,—Sir, I am a new Member to this august House and never before have I taken any part in the proceedings here. I therefore would crave the indulgence of this Honourable House if I fail to make a coherent speech. But then I owe it to the people who sent me here to express in their behalf what I think is their view on this most important matter.

Sir, this Constituent Assembly which represents the sovereignty of India and which is supposed to give shape and form and prestige to our freedom is here deliberating on a Constitution that is supposed to be the guardian of our future. With that end in view, our leaders have laboured enough and hard and have produced a draft constitution which we are now going to discuss. But I cannot really congratulate the Drafting Committee to the extent that they have been congratulated on this draft.

Sir, my first point is this: that although Dr. Ambedkar has delivered a very brilliant, illuminating, bold and lucid speech completely analysing the Draft

Constitution—here I must say that but for that speech I would not have been able to find out the defects in the draft so much—I must say that the draft does not represent the Objectives Resolution which this sovereign body passed last year. So far as I have been able to read it and so far as I can remember, the Objectives Resolution was a magnificent product which represented the mind and spirit of India not only for the moment, but for the distant future too. What was the Objectives Resolution? That Objectives Resolution envisaged a federal constitution in which the provinces would have the residuary powers and the Centre would have no more and no less power than is necessary to bring the provinces into a coherent system. But this Draft Constitution, by whatever name it may be called, federal or unitary, parliamentary or presidential, is laying the foundation more for a formidable unitary constitution than a federal one. By unitary I mean that it has surreptitiously taken more power to the Centre than it has given to the provinces. Whatever Dr. Ambedkar might have said or might have been thinking of about giving power to the individual with all his disdain for our villages, I must say, this Constitution does give nothing to the individual, nothing to the family, nothing to the villages, nothing to the districts, and nothing to the provinces. Dr. Ambedkar has taken everything to the Centre.

And what is this Centre? By this centralization of power, I do not know what will happen in the future. But from my present experience I must say that the Government that we are now having has been so centralised and our people in power have become so greedy of power that in the name of law and order, peace and unity, they are liable to go astray easily if the country is not vigilant and the people are not relentlessly vigilant. I should therefore say that, whatever might be the future of India, we must once for all know and the people must once for all know and realize what is the ideal for which we are having this Constitution and what amount of freedom we are going to have.

I beg to question, Sir, whether we want a strong Centre. For what? Some people say that a great deal of provincialism is coming to the fore day by day and that there may be friction. Therefore, to start with, we must make the Centre so strong that it will be invincible. But this should not mean that we must be war-minded. We want a strong Centre. Strong against whom? Is it against Pakistan? Is it against Russia? Or is it against the people of India themselves? I am quite sure that if you can build on the solid foundation of India's past, which is nothing more and nothing less than the spirit or the inward vision of India or the inwardizing temperament of India, if you can think and speak in terms of the spirit and not of your external objectives, I am quite sure you can build an India quite united, quite strong and at the same time an example to the world. But if by taking so much power into the hands of the President or the Ministers, or the central oligarchy, we want to unite India, I am sure India will either break or it will be another menace to us and all.

Now, it has been said that the United States of America has got a federal constitution, but that gradually it is becoming a unitary constitution and that therefore it is getting better. It has also been said that as time goes on it is natural that the Centre must be taking more power and that the provinces and units must be losing more and more power. This is a temperament of warmindedness or at least of panicky peace. Let us see to what effect the United States Government has taken more power. The effect can only be that they will be stronger against Russia or some other country. That means strong against external forces. I should say that the strength of a nation and the unity of her people do not depend upon the State power. It depends upon the realisation of the inner unity and the human spirit that makes all men brothers. Therefore if the words in the Preamble 'Equality, justice and peace'

[Shri Lokanath Misra]

could have meaning only if we have a strong Centre, the sooner we are disillusioned, the better. I am wholly against a very strong Centre in the sense that the Government will be so strong, though not dictatorial or oligarchic, that the provinces will lose all importance, all initiative and drive. That ultimately curbs the individual, below.

An Honourable Member just now said that we may have a strong Centre but no common language. I should say that we should be strong at the Centre if only we have a common language. If really we must have unity in India, we must have a common language. If we are not prepared to forego the Provincial language how can we have unity and how does it lie in the mouth of a member to suggest that we must have unity, but no common language. He probably means that we must have a strong Centre with no common language which expresses an inherent common culture. The slogan of united India with a strong Centre is that way frightful. A strong Centre is not worthy of the struggle that may be in store for us. Now my time is up. I would have taken some more time to X-ray the speech of Dr. Ambedkar. I bow down to his knowledge. I bow down to his clarity of speech. I bow down to his courage. But I am surprised to see that so learned a man, so great a son of India knows so little of India. He is doubtless the very soul of the Draft Constitution and he has given in his draft something which is absolutely un-Indian. By un-Indian I mean that however much he may repudiate, it is absolutely a slavish imitation of —nay, much more—a slavish surrender to the West.

Kazi Syed Karimuddin (C. P. and Berar : Muslim): Mr. President, Sir, I congratulate Dr. Ambedkar for the introduction of the motion for the consideration of the Draft Constitution of India. The speech that he delivered was a remarkable one and I am sure that his name is bound to go down to posterity as a great constitution-maker.

It was stated by him yesterday that the Constitution is the bulkiest in the world. In my opinion it is no merit in itself, unless there is substance in it. There is no doubt that we have copied provisions after provisions from foreign constitutions. This constitution is neither parliamentary nor non-parliamentary, and it is yet to be seen, when we begin to work it, whether it would work properly.

Sir, I have very serious objections to some parts of the Constitution. As Dr. Ambedkar himself has agreed, the continuance of the States is really not proper in India, *i.e.,* States or groups of States who will have the authority to legislate or to have separate Constituent Assemblies. In my opinion, it is really a stigma and a blot on the Constitution of India that even in the 20th century Rajas, Rajpramukhs and Nizams are allowed to continue and to have their dynasties also continued. All these institutions must be abolished and there should be similar constitution for every State. All these States or groups of States should either be merged with the provinces or should be converted into independent Provinces.

Sir, the most important provision in this Constitution from the point of view of the minorities is the provision of reservation of seats with joint electorates. The Constituent Assembly last time considered the problem of separate and joint electorates with reservation of seats. The only provision made for the minorities now is joint electorates with reservation of seats. In my opinion, it is neither here nor there. Joint electorate with reservation of seats is absolutely of no consequence to the minorities. It would do them positive disservice. The representatives who would be elected under joint electorates with reservation of seats would not be the representatives of the minorities for whom reservation is given. Even a false convert, or a hireling of the majority party,

would come in by the votes of the majority party. Therefore, my submission is that this provision is detrimental to the interests of the minorities. If the two resolutions regarding the continuation of separate electorates or joint electorate with reservation of seats with a fixed percentage of votes of the community to which the candidate belongs which were rejected last time are not acceptable to the House, the minorities should forego this reservation of seats under joint electorates. Sir, this is going to create permanent statutory minorities in the country. It would be to the great disadvantage and detriment of the Muslim community or any other minority community which claims reservation, as there is no chance under this system for any real representatives of the minorities to be elected. Even when we are having separate electorates, we are not able to do any service to the community. We have thrown ourselves at the mercy of the majority and it is up to the majority to rise to the occasion and in this way the minorities and the majorities will be united together in the country to the advantage of both. We have seen how things have happened in India after 15th August 1947 and we were sitting in separate compartments helplessly. We should be prepared to have joint electorates and fight our battles on a common ticket. It is up to the majority to create confidence in the minorities and it is up to the minorities to come forward and co-operate with the majority. Therefore my submission is that reservation of seats will create more bitterness, more jealousies, more communal hatred and Muslim disintegration. This provision is not in favour of the Muslim community. It is no use accepting safeguards which are nominal and cannot be effective. This is my opinion. We must be left to our own fate and we are quite prepared to face the future. If at all the majority community want to protect the rights of the minorities, let them introduce the system of proportional representation. Proportional representation with multi-member constituencies with plural voting is the only democratic system known in Europe for the protection of Political and Communal minorities. Without any sacrifice of democratic principles the minorities can be protected. The rights of the minorities can be protected in another way and that is by the establishment of a non-parliamentary executive in this country. I was really surprised to hear Dr. Ambedkar, while he was introducing the Draft Constitution, praising the system of parliamentary executive, while in his book "States and Minorities" he has advocated that the system of non-parliamentary executive is best suited to protect the minorities, and I would like to read to him what he himself stated in the year 1947:—

"Provisions for the protection of minorities—

The constitution of the United States of India shall provides

Clause 1

(1) that the executive — Union or State — shall be non-parliamentary in the sense that it shall not be removable before the term of the legislature.

(2) members of the executive, if they are not members of the legislature, shall have the right to speak in the legislature, speak, vote and answer questions:

* * *

(4) the representatives of the different minorities in the Cabinet shall be elected by members of each minority community in the legislature by the single transferable vote.

(5) the representatives of the majority community in the executive shall be elected by the whole House by the single transferable vote.

* * *

In my opinion this is the easiest method to afford protection to minorities. What has happened in India? In all provinces there were acts of rioting, arson and murder and the ministers were not courageous enough to come forward and stop them immediately, being afraid of their constituents. If you introduce non-parliamentary executive, the members of the executive would not be afraid because they are not liable to be removed by their supporters. Therefore in parliamentary executive the Government is naturally weak, and vacillating because the ministers have to depend for their continuance on communally minded supporters.

[Kazi Syed Karimuddin]

Sir, the fourth part of the Constitution is the directive fundamentals which have been given. I want to tell Dr. Ambedkar that in his book, he has mentioned that all these principles and fundamentals should be mandatory. He has mentioned that these provisions should be enforced within a period of ten years. What is stated in Part IV is vague. What we want today is not mere talk of economic or philosophical ideals. We want an economic pattern of the country in which the lot of the poor masses can be improved. In this Constitution which is framed, there is neither a promise nor a declaration for the nationalisation of the industries. There is no promise for the abolition of Zamindari. It is nothing but a drift. It is nothing but avoiding the whole issue in a Constitution of a Free India. Not to have a definite economic pattern in the Constitution of Free India is a great tragedy.

One word more, Sir, and I have done. It is mentioned in a foot note to the Preamble that the question of our continuance in the commonwealth or otherwise is not yet decided. I am very sorry to point out that when the Objectives Resolution was moved, it was proclaimed to the world and to the Indians that India will be a free and Independent State. Why is this indefiniteness? At whose instance is this done, when by a resolution the sovereign Constituent Assembly of India had declared that India would be independent. I cannot understand how this position was taken and with whose authority and with whose consent this was done. My submission is that Dr. Ambedkar has gone beyond his powers in taking this wrong step. We have not forgotten the tragedies that have been committed in India. We have not forgotten the tragedy of Jallianwallah; we have not forgotten the support of British imperialism to the Union Government in South Africa against Indians; we have not forgotten the racial policy in Australia. Such an association identifies us with Fascism in South Africa and with racial discrimination in Australia and moreover it would be an absolute failure of our foreign policy of neutrality. In view of all this my definite opinion is that there is no other way except to be out of the Commonwealth. Pandit Jawaharlal Nehru in 1929 at Lahore has declared that unless British Imperialism and all that it implies is discarded, India could never be a member of the Commonwealth. I am very sorry my time is up.

Prof. K. T. Shah (Bihar : General): Sir, I have to join in the chorus of congratulations that have been offered to the Drafting Committee and its Chairman for the very elaborate Draft Constitution that they have placed before this House. I have particularly to felicitate the Law Minister for the very lucid way in which he has put forward the salient features of the Constitution for our consideration, and given us thought-provoking ideas, with reasons why certain items have been included and why certain others have been put in the manner they have been.

My congratulations, I venture to submit, are the more sincere, as I am afraid I am not able to take the same view on many of the leading issues involved in this Draft Constitution. I would invite the House, Sir, to consider that in the first place the principles on which the Draft is based, or the instructions for preparing this draft were prepared and given at a time when this country was passing through very serious crises and happenings which many of us deplore. Our minds were tense; our thoughts were fixed upon certain events, which, if I may say so, distorted our vision of the future India as it should be. Under the stress of those events, instructions were given and principles laid down which I for one feel on more sober consideration we may have reason to revise. When the proper time comes, Sir, I shall put forward suggestions for amending certain provisions in the Constitution, on which I will not take the time of the House at this moment. Certain general ideas, however, I would beg to place before this House at this stage which I think would require reconsideration;

and the foremost is, to use the words of Dr. Ambedkar himself: "the aims of this constitution." What is this Constitution intended to do? The Constitution's aim, as explained by Dr. Ambedkar, or as can be gleaned from the wording of the Constitution itself, is almost entirely political and not at all social or economic. I hope no one will think it is a bee in my bonnet when I put forward this idea that there is not a trace of any desire to secure social justice, a real equality of the people, not merely paper equality, but equality in actual fact, in daily living and experience, which we were promised and we had all hoped would be the result after the Imperialist exploiter was ousted from the country. As I read two or three most prominent chapters or articles I feel a glaring lack of any attention being given to the disinherited, to the dispossessed, to those who have not scope to have the minimum, what I may call, a decent standard of civilized existence in this country.

Take the chapter of Fundamental Rights. For example, we were told and with some force that the Fundamental Rights have been added to and modified by a number of exceptions, but that these exceptions do not take away the right. I for one feel that the exceptions are too many. As I said before we have given the instructions or the principles have been laid down for drafting this Constitution in a moment of tension, in a moment when our minds were terribly disturbed so that attention was paid only to the dangers in an emergency rather than a more normal more permanent, more usual form of life or standard of life which we were hoping for.

In the various items of the Fundamental Rights which will come up for detailed discussion later on I shall have, I hope, an opportunity to suggest amendments and redress the omission or correct the distortion this Draft suffers from on this most important subject.

But there is one aspect of it which I wish even at this moment to place before the House. The Rights are throughout spoken of only as "Rights"; and there is not a word said about Obligations. I would put it to the House that we are living and thinking as individuals or as a community too much of Rights and forgetting our Obligations whether as citizens, or as communities, or as a State. I for one would like to emphasize the chapter of Obligations of the State to the individual and *vice versa* as much, if not more, as that of rights.

The Rights, if I may say so, indicate extreme individualism, an exclusionist or exclusivist tendency, in which the individual emphasises his exclusive claims or possession of privileges or possibilities far more than that of his membership of a group or of a society, or of a community; whereas a similar emphasis on Obligations would teach him that he is not living in an isolated compartment by himself, he is not living in a Robinson Crusoe island, but that he is a member of a cooperative society, of a mutually interdependent community, of a state in which the only guarantee for survival, the only chance of progressive advancement is a co-operative effort, in which individual rights have to be subordinated, the individual demands have to be subordinated to the co-operative necessity of joint effort for a common or agreed end. Sir, we are living in an age when we think so much of freedom; and talk in terms of individual liberty so much that we are apt to forget that "freedom" is likely to degenerate into "licence" if we do not take care to remember the need simultaneously for self discipline, that freedom has its obligations just as much as its advantages. This would be a self-imposed restriction like any kind of discipline that one can think of.

Here again is a case in which in regard to not only individuals, but also communities the provinces and the whole Union, I should like to emphasise the Obligations chapter as much as, if not more than, the chapter of Rights. The individual has his rights, and I for one shall never agree to any suggestion of any infraction of those rights. But, at the same time the individual as well as the society have mutual obligations; and unless these obligations are duly stressed, I fear the apprehensions of many of us, about the likely consequences of the unrest of our time will not be lulled to rest.

[Prof. K. T. Shah]

In this connection, I would like to add another idea which I would beg the House to consider more at length later on. We are talking about "Democracy" almost as a fetish. I know I am using some unpopular language when I speak in this strain. But please remember that "democracy", to be successful, has to be qualitative as much as quantitative. You must remember that what should count ought not to be merely the number of hands that are raised or the number of heads, present, but the character of those hands or the content of those heads.

In the Constitution before us, this qualitative aspect of democracy is, I am afraid, very much over-looked, if it is at all there, whereas the quantitative aspect figures almost in every chapter, and if I may say so, almost in every word of this Constitution. I could give a number of illustrations straight off of the way in which the wordings express more the quantitative side of democracy, more the number, more the numerical strength, and not the moral force, the spiritual backing, the intrinsic value that a sound democracy should have.

I am afraid this is an idea not very popular at the moment, not very fashionable. But it is an idea which I wish the House would at least bear in mind before adopting the several clauses of the constitution. They embody a view, which, I am afraid, has already become obsolete. We were told the other day that there is nothing new in this Constitution. The Law Minister was good enough to say that in matters like this, there can be nothing new. But here is a suggestion: why should we not begin, if I may say so, emphasising what I call the qualitative side of democracy of the new India as much as we have so far been talking of territorial or quantitative democracy?

In the chapter relating to the distribution of financial resources and obligations, to which allusion was made this morning, in the chapter relating to the distribution of powers between the provinces or the units and the Union, in the question of the emergency powers, and so on, always there is a hint, behind the scenes so to say, there seems to be a conflict even in the minds of the draftsmen, between what is demanded in the interests of the integrity, independence and security of the new State and also by the freer life, nobler living, and wider opportunity for the individuals that make up this nation.

I am not inclined, Sir, to invite a repetition of your bell though I have a lot more to say. Even if you are gracious enough to extend the time, I would not be able to say it within this time limit. I would, therefore, reserve what I have to say to the time when the amendments come up for discussion. Thank you.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Sir, I would be failing in my duty if I do not at the very outset congratulate my Honourable friend and old colleague, Dr. Ambedkar, for the magnificent performance he made yesterday. The House appreciates the stupendous amount of time and energy he has spent in giving the constitutional proposals a definite shape. In the few minutes at my disposal, I propose to discuss some of the most striking points in this Draft constitution, and before I plunge myself headlong into the provisions, I would request my honourable friends Dr. Ambedkar and Sir Gopalaswami Ayyangar to listen to me for a few minutes with attention.

The first thing to which I would like to draw the attention of my honourable friend. Dr. Ambedkar, is the description he has given of India as a Union of States. I take particular objection to the expression States; for, "States" in political parlance, in the constitutional literature of the world, has got a certain special connotation. Unfortunately, the expression States has been used in this Draft Constitution in many places for a variety of purpose and in different senses likely to create confusion. If the word States is retained in the description of India as it is, the impression may be caused in future that these States are independent sovereign States, joined to the Centre by some sort of a voluntary association. Students of constitutional history know what happened in the United States of America. There, some of the States, under

the advice of some of the eminent jurists of the time, formed the States' Rights School and seriously contended that the States had each of them real sovereign and independent status and that it was by sheer voluntary association that they formed into a federation and worked together. I want this to be guarded against. We had before the transferance of power a body of territories known as Native States. Many of them have acceded to the Indian Union. If this description of India, as is given in Articles 1 and 2, is retained, these States may contend, at some later stage, that they were sovereign States and were united to the Indian Union by purely voluntary arrangement. We want to make it perfectly clear in the constitution that this Union is an indissoluble Union of indestructible States, States in the sense of constituent units. If I try to develop this point further, I will take more of the time of the House. We have got to find a suitable expression. We could use the word Provinces in the case of Governors' Provinces, and in the case of the Native States, "principalities" or expressions like that. If, Ajmer-Merwara, Coorg or even Delhi were to be dignified by the name of State, it would be descending really to the region of the ridiculous.

The next point to which I want to draw the attention of the House, is the discretionary power given to the Governors in the Constitution. The House knows very well that according to the Government of India Act of 1935, the Governor had certain special powers to be exercised by him in his discretion or in his individual judgment. This caused a lot of friction between the provincial Ministers and the Governors,—some of the Premiers are sitting here in front of me and I see them nod in assent of what I say—that this had been really a source of discontent among the popular ministers in the country. After the 15th of August, 1947, we made a clean sweep of these provisions. It is now provided that "there shall be a Council of Ministers to aid and advise the Governor in the exercise of his functions", removing completely all the discretionary powers which the Governors used to enjoy under the Government of India Act of 1935, untill the 15th of August, 1947. Curiously enough I find that in this Constitution these noxious provisions have been bodily incorporated in Article 143 (i) and (ii). Here in this Constitution we have again provided for discretionary powers of the Governor but I ask the House very seriously to consider whether it really means progress or regress, advance or reaction. Today the Constitution of the country provides that the Governor or Governor-General of this country shall function merely as the Constitutional head and nothing more. Tomorrow if this Constitution, as it is, comes into operation with Section 143 (i) and (ii), the Governor will be more than a constitutional head as he will have certain discretionary powers. There is another point to which I would like to draw the attention of the House. In the Government of India Act of 1935 there was in Section 54 a salutary check that whenever the Governor was to function in his discretion or in the exercise of individual judgment, he was to be under the superintendence, guidance and control of the Governor-General. This is entirely absent in the present case. Therefore this demands serious consideration.

My third point is regarding the provision for a very strong Centre. An Honourable Member speaking before me was making a grievance that the Centre was being made over-strong. Yes, we want a strong Centre by all means, if we want to preserve or maintain our new-born freedom, and if we want the solidarity of this country. (Hear, hear). We have had enough experience of Provincial Autonomy of which we had been enamoured in the past and now we have seen its effects. We have seen the centrifugal and fissiparous tendencies that it has generated and we all know it to our cost. If we want to hold together all the component units there must be a Centre which would be able to bring them into cohesion, and that Centre must have ample powers for the purpose. This does not mean that provincial autonomy should be ruthlessly curtailed.

[Pandit Lakshmi Kanta Maitra]

My next point is regarding reservation of seats for minorities. I have a strong feeling about it. Reservation of seats today has absolutely no meaning (Cheers). Reservation of seats for Muslims can have absolutely no justification. After having divided the country on the basis of two-nation theory with all its implications, after having provided in the Constitution Fundamental Rights some of which are justiciable, after having provided in the Constitution Directive Principles of Governance, after having provided in the Constitution for adult suffrage, after having done all this, does anyone feel called upon to provide for any reservation? In principle I am opposed to it. Let my Muslim friends not misunderstand me. They have got this country divided and we know to our cost what that division has meant. Punjab has understood it and Bengal has realised it. Therefore, those of you who are super-secular minded, by all means, give all manner of special representations to whom so ever you please but so far as the province of West Bengal and East Punjab are concerned, I beseech you to take your hands off. In the last session of the Constituent Assembly, I got a motion passed that so far as reservation for minorities etc., is concerned, exception must be made in the case of West Bengal and East Punjab; the House accepted it.

Prof N. G. Ranga (Madras : General): We do not want reservation.

Pandit Lakshmi Kanta Maitra : Mr. Vice-President of this august Assembly represents the Indian Christian Community in India. He is a man of great eminence and standing and he has been president, for three successive terms, of the Indian Christian Association. this Christian community under this able guidance and leadership has never claimed any special representation. And if there is any community in India which can legitimately claim special representation, it is the Indian Christian community. He has set an example and I hope the leaders of the rest of the communities would emulate his example. We are trying to weld all Indians into a common nationhood. Whatever is left in India after division, is one nation and it will be the endeavour of Constitutionalists, public-men and the Government to work up to this ideal that we are all one nation.

Next, I want to insist that we should have in every province a bi-cameral legislature. You are giving adult-suffrage and you do not know how big your legislatures would be and you do not know what kind of people you will have. We want a revising chamber as a check or brake on hasty legislation. That has been a very salutary practice which obtains in England and so far as I am concerned, I have not the slightest doubt that you must have bi-cameral legislatures in every province for another two decades at least. In any case I, do declare here that we in Bengal want a bi-cameral legislature, an upper House.

Next, the successful operation of this constitution hinges on a very important matter and that is the financial adjustments between the provinces and the Centre. Unless you provide here and now in the body of the Constitution itself the basis on which allocation between the Centre and the provinces would be made, I am afraid the new constitutional machinery would begin functioning at great disadvantage. The provinces or the component units will not know how to proceed with their development plans or Nation-building projects unless they are told in the Constitution itself their respective shares in the revenues of the Centre. I would therefore suggest that a Committee of impartial financial experts should be appointed to advise the Central Government, after exploring the entire field of taxation, the allocation to be made to the different provinces out of the revenues that are derived from the provinces on behalf of the Centre and other sources of taxation.

Lastly, I think I should make a passing reference to the controversy which has unfortunately been raised in this House over the question of State language. The protagonists of Hindi, in their enthusiasm, have gone too far. As a reaction two or three of my friends have already spoken against it somewhat bitterly. I

wish that this matter had not been raised at this stage. I can assure my friends from Northern India that if we cannot speak Hindi today, it is simply because we happen to be born in the Eastern or Southern parts. It is a mere accident of birth and individual merit or demerit has absolutely nothing to do with it. We will try to see how far we can go with you. We want some national language for India (Cheers) but it is no use repeating *ad nauseum* the new dictum that independence will be meaningless if we all do not start talking in Hindi or conducting official business in Hindi from tomorrow. It is both ridiculous and absurd. However, at some later stage we must solve this problem. I can assure my Honourable friends from the north that we have got every sympathy for Hindi, but let them not in their over zealousness mar their own case. This is a sort of fanaticism,— this is linguistic fanaticism, which if allowed to grow and develop, will ultimately defeat the very object they have in view. I, therefore, appeal to them for a little patience and forbearance towards those who for the time being cannot speak the language of the north. After all they also humbly claim that their own languages contain literary wealth and treasure which they cannot all throw away at the mere bidding of the North.

Shri Ramnarayan Singh (Bihar : General): Sir, I congratulate my Honourable friend Dr. Ambedkar on the opportunity he got of introducing this Constitution Bill and I support his motion. As political workers we always talked of Swaraj which means that power will go from the British direct to the people in the villages. But I do not think this proposed constitution will give that power to them. As before, once in five or seven years they will give their votes and their power will end there; later on, they will be governed as in British days. What we all want is that the political organisations in the country should serve the people; we do not want to be governed as before. We do not want Governors and even Ministers. The political and other organisations should think how best to serve the people of the country. As regards the powers of the President and Ministers, my Honourable friend Dr. Ambedkar has very well appreciated this parliamentary system. He was not ashamed to admit that many things have been borrowed from other constitutions. It is of course a fact that beggars and borrowers do not feel ashamed of what they do, but those who do not want it feel the pangs of it. This constitution will only indicate to the outside world that we have no originality and only borrow from the constitutions of other countries. I say emphatically that the constitution is not what is wanted by the country.

Dr. Ambedkar said in an appreciative mood that it is a parliamentary system of Government. If that is so, I am sure it will develop surely into the party system of Government which has been a failure in the west. I appeal to the House to consider this very seriously. There are people who say that the party system is based on democracy; on the other hand many jurists and politicians feel — and I also feel — that there is no democracy in it; on the other hand it strikes at the very root of democracy. Democracy means rule by the majority, which must consists of free and independent votes. But what we find is that our votes are influenced by a few people. And once the votes are influenced there is no democracy. I therefore say that this parliamentary system of government must go out of this; it has failed in the west and it will create hell in this country. I have a bitter experience of its working in the provinces. In the Presidential system of government it is easy to find one honest President, but it is not so easy to find an army of honest ministers and deputy ministers and parliamentary secretaries, and so on. So long as this thing is there, there can be no justice. Of course we can provide for the removal of the President if he goes wrong, but I think both in the Centre and in the provinces we must have all-powerful Presidents who will be responsible for the work done and who will choose their ministers or secretaries. With regard to these people I am inclined to say that it is better

[Shri Ramnarayan Singh]

to be ruled by devils than by an army of ministers and secretaries, etc. I want power to go direct to the villages. It is not enough that they should vote; they must be made to take an interest in day to day administration of the country. Besides, everybody knows that in a good State the three functions of judicial, legislative and executive are independent. But in these days under the parliamentary system of Government people form parties and manipulate votes and get a majority in the Legislatures and form the government. This is dangerous. We find to our cost that these people wish to please their relatives and party men. Therefore I suggest that the parliamentary system should go and the three branches—executive, judicial and legislative—should have nothing to do with one another.

As regards language and protection of cows I agree with what my friend Seth Govind Das said. The economy of the country demands that the question of cow protection should form one of the items of the Fundamental Rights which should also include the right to bear arms.

As regards reservation of seats I feel it should not be allowed. All my friends know that I have never been communal-minded. But, as Pandit Maitra said, when the country was divided on a communal basis, there should not be any reservation for the Muslims. At the same time I am not one of those who say that all Muslims should be sent to Pakistan or should be harassed in the Indian Union in any way or that their rights should be less than mine. They should have the same rights and privileges here as others but there should be no talk of reservation for them. To provide for reservations for any community would do great harm to the country. In conclusion I appeal to the House and to the country outside to frame the constitution in such a way that power may go to the purset and the best of our countrymen and that those who wield power may serve the people and make them happy and prosperous.

Dr. P. S. Deshmukh (C. P. & Berar : General): Sir, I am thankful to you for giving me this opportunity to express my views on the proposed constitution. The time is limited and therefore my observations can only be of a very general nature. When consideration of the various clauses takes place I shall unfortunately not be present here. I am therefore all the more grateful to have these few minutes.

The speech delivered by my Honourable friend Dr. Ambedkar was an excellent performance and it was an impressive commentary on the Draft that has been presented. As is well known, he is an advocate of repute and I think he ably argued what was before him. He would perhaps have shaped the constitution differently if he had the scope to do so. In any case I think he admitted his difficulties fully when he said that after all you cannot alter the administration in a day. And if the present constitution can be described in a nutshell it is one intended to fit in with the present administration. That is why there is nothing original and nothing striking, nothing to create any enthusiasm about it. It is to fit in with the administration left by the British in this country. The Governors of provinces are to be there; the administration in the provinces is not to be disturbed. What has been disturbed is only a few names here and there. We are told that there will be a President of the Indian Republic. As the learned Doctor himself admitted, he has been metamorphosed into a pitiable figure head like the present King of England. So the name of President is merely a misnomer. It is to be adopted because we have perhaps no other alternative and because we are not prepared to call the head of our executive by the name of king. Apart from that and apart from the enumeration of Fundamental Rights, we do not find any striking difference between this constitution and the Government of India Act of 1935. Elaborated in the way in which it was done by my learned friend it looks perhaps more attractive but on an ultimate analysis it will be found to be the same as the Act of 1935 with a few changes here and there.

With regard to the Fundamental Rights my Honourable friend had to admit that they have not tended to remain as fundamental as they should have been excepted to. What is being done by the Supreme court of America is tried to be done by provisos in the Draft Constitution. The various Fundamental Rights embodied in the American constitution were interpreted by the Supreme Court of America from time to time, and in their interpretation there were certain clogs placed on the fundamental nature of the Fundamental Rights, provided for in the American Constitution. That is what we do here by way of provisions. I for one do not like the Fundamental Rights at all because those which are necessary are already there in the Act of 1935, without the pompons name of Fundamental Rights. For instance, freedom of speech and freedom to associate freely although these rights had to be trampled under feet on various occasions during the Congress movement. The Fundamental Rights which are provided in the present constitution should not either have been circumscribed as they are or their enumeration should have been avoided to a large extent. Because some at least of them are bound to prove a clog, an obstacle to our future progress. For instance freedom to acquire or sell property and to dwell anywhere one likes. I think it takes away from the sovereignty of the Parliament. If this is going to be the state of our Fundamental Rights provided for in the Draft Constitution based on the parliamentary system of government, these rights should have much rather been permitted to be determind from day to day by the Parliament itself. Why should we take away or encroach on the sovereignty of Parliament by defining the rights which we are not prepared to concede on any broad basis? We have hedged in the Fundamental Rights with so many restrictions that they are neither Fundamental nor have much of rights in them. In some respects at least they constitute an enumeration without much significance.

The Honourable Dr. Ambedkar was at pains to justify the inclusion of the directive principles of administration in the body of the constitution. He was constrained to admit that if he had the choice he would have relegated them to the Schedules in the Constitution. That I think is a very clear and explicit admission on his part. Really speaking there is no place for them in the Constitution. It is a sort of an election manifesto. Moreover, the directive principles themselves are not of a very fundamental nature. I could have understood it if it was provided that it shall be the duty of the State to establish the right of the state to the ownership of all mineral resources, that all industries shall be the property of the nation, that the Government derives all its authority from the people, that no person shall be permitted to be exploited by another etc. If there was something fundamental like that there would have been more use. It is no use to put them in the Instrument of Instructions also as suggested by Dr. Ambedkar. They should not have in any case found a place in the Constitution itself.

Then my friend tried to tell us that the Constitution was more unitary than federal. My opinion frankly is that the present Constitution is neither unitary nor federal. That being so, this is nothing better than the 1935 Act. It is not unitary because provincial autonomy of a sort will continue; it is not federal because there is no freedom allowed to any of the units to any substantial degree. So I think this is a hotch-potch of the provisions taken from several different constitutions and my friend has been hard put to it to make a consistent whole out of it. Of course, as an advocate he has justified every provision in it. This Constitution will in all probability go through the House without much change. I think we are destined to have this Constitution and no other. But, in spite of that, I should like to say that we should have a Constitution about which every individual in the country would feel enthusiastic.

Sir, after all this is a country of agriculturists. The peasants and the labourers should have a larger share and the most dominating in the Government. They should have been made to feel that they are the real master of

[Dr. P. S. Deshmukh]

this the biggest nation on earth. I do not share the view that the past or our ancient civilization is not worth utilising for the future building up of the Indian nation. That is a view from which I differ. I have offered these few comments, within the time at my disposal. I do not think that this House would be in a position to alter the Constitution largely.

Here I may refer to the feeling of some people that we have got into the Constituent Assembly and want to drag on remaining in office by some means or the other. Though that feeling is there, we have to make the best of the situation; we must try to remove it and improve it as much as possible. That is all that is possible in the present circumstances.

I hope the Honourable Doctor, although he has not been able to frame a Constitution more akin to the genius of the Indian people, will be accommodating in the matter of the amendments intended to make the ordinary citizen feel more enthusiasm and the peasant and the labourer feel that his Raj and his kingdom is going to dawn. That was the Ashirwad that Mahatma Gandhi gave him.

Shri S. Nagappa: Mr. Vice-President, Sir, I join the previous speakers in congratulating the Honourable Chairman of the Drafting Committee and all members of it. They have taken care to see that all aspects of all problems and all the reports of the various committees have been consolidated and looked into.

Now, as regards the labour problem, which my friend Shri T. T. Krishnamachari was kind enough to bring to our notice, it is a fact that we have been finding that in various provinces different measures to deal with labour are going forward. It would have been better if Labour therefore had been in the Central list. That would help to solve all the problems agitating labour.

Sir, I am one of those who plead for a strong Centre, especially as we all know that we have won our freedom very recently. We require sufficient time to consolidate it and to retain it for all time to come. For another reason also the Centre has to be strong. We have been already divided in so many respects, communally and on religious grounds. Now let us not be divided on the basis of provinces. So, in order to unite all the provinces and to bring about more unity, it is in the country's interests as a whole to have a strong Centre.

Another reason why we should have a strong Centre I will mention presently. Some people say that we should have a strong Centre with a war mentality. I do not think we should have that mentality at all. We have been trained to be non-violent and truthful. These are our principles. When that is the case, there is no likelihood of the Centre having war mentality.

The Honourable Dr. Ambedkar, in introducing his report and the Draft Constitution, mentioned that that the Constitution was federal in structure but unitary in character. I believe, Sir, especially at this stage we require such a Constitution. We were told that he has borrowed from the Government of India Act. When we find something good in it, we copy it. If we find something useful and suitable to us, to our custom and to our culture, in other constitutions, there is no harm in adopting it.

The minorities have been very well provided for in the Constitution. I am glad about it and the representatives who have been returned to this House to safeguard the interests of the minorities are also glad about it. For this we have to congratulate the majority community. We have to congratulate the majority community for conceding certain special privileges to the minorities.

Questions were raised here whether it is necessary for the minorities to have reservation. I think it may not be necessary for all time to come and for all the minorities. There are certain minorities which require some safe-guards. I do not want these safeguards to be continued for all time to come. It depends more on the majorities how the minorities are made to merge with

majorities. It is not for the minorities to claim any reservation and to be always secluded or separated. The minorities are more eager than the majorities to get themselves merged at the earliest possible moment, but the task lies not on the minorities but on the majorities. The majority must conduct itself in such a way that the minorities feel that they are not different from the majority. It is only then, Sir that we will be in a position to do away with the minority problem. Anyhow, I am thankful to the majority for having gone such a long way. As my Honourable friend, Mr. Frank Anthony, was saying this morning, the minorities have gone more than half the distance to meet the majority. Sir, there is some point in having reservation at least for some time to come. I only want to emphasise that it is the duty of the majority to see that the minorities do not feel that they are minorities.

I am glad, Sir, that social problems have also been touched. In the Constitution it has been made an offence to practice untouchability in any form. I am glad that the Drafting Committee has taken care to see that this is incorporated in the Constitution.

Sir, with regard to the services also, the Committee has made provision for the adequate representation of minorities. But there is one omission which I want to bring to the notice of the House. Nothing has been said that, when the leader of a party forms a government, his government should be so formed as to reflect all shades of opinion and all classes of people. If such a provision is included, it will go a long way in solving the minority problem. I am thankful to the Drafting Committee for having conceded most of the points of these minorities. If the Drafting Committee had taken care to include such a provision as I have mentioned regarding the formation of Cabinets, both Provincial and Central, they could have solved the minority problem completely. The House can easily imagine as to what will happen if this matter is left to the sweet-will and pleasure of the Premier whether to select a member of the minority communities or not. The Premier may say that in his Party there is no member belonging to the minority communities and that therefore he need not include any member in his Cabinet from outside his Party. In order to see that the minorities get a share in the administration of the country, it would have been better if the Drafting Committee had made a provision stipulating due-representation of the minorities in the Cabinets, both Provincial and Central.

As regards the language problem, it has been touched on by my Honourable friend coming from Southern India. I feel that my Honourable friends from Northern India are taking undue advantage of the fact that they have learnt Hindi from birth. That should not be the reason why these friends want to force Hindi on the people of Southern India. This does not mean that we are not for this language. We are not fond of English or any other foreign language. We are fond of our own language Hindi but that must take its own time. Even a child, when sent to school, takes its own time to study. Why are you in such a hurry? I do not think you have got to catch a bus or anything. I would like to assure my friends from Northern India that we are for one language for the country, whether it is Hindi or any other language decided by this House. But you should not try to force it on us all of a sudden and see that we are kept in the dark thereby. This must take time till all the people in this country become accustomed to it.

Sir, I once again thank the Honourable Dr. Ambedkar for having taken the trouble of drafting this Constitution. No doubt, it is an elaborate task but he has done it so successfully and in such a short time.

Mr. Vice-President : The House stands adjourned till Ten of the Clock tomorrow morning.

The Assembly then adjourned till Ten of the Clock on Saturday, the 6th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Saturday, the 6th November 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr.Vice-President (Dr. H. C. Mookherjee) in the Chair.

MOTION *RE* DRAFT CONSTITUTION—(*contd.*)

Shri Arun Chandra Guha (West Bengal: General): Mr.Vice-President, Sir, we are assembled here to give final touch to the first Constitution of Free India. It is a very significant moment of our life and in this moment I cannot but recollect the past, the years of trouble and struggle that we have passed through. We have lost many comrades; the whole nation has undergone many troubles and sacrifices. When we are assembled here to give shape to our future destiny and our future constitution, I must bow down to the memories of those who have left us in the course of the long years of struggle that we have passed through,—Surendranath Banerjea, Lajpat Rai, Motilal Nehru, Deshbandhu Chittaranjan, and many others who have led us in the struggle and last by Mahatma Gandhi, the Father of the Nation. And in our intimate circle, particularly in Bengal, we have also our friends who have led us through all the struggle, less known to the public, but not less devoted to the cause, not less honest and sincere in their ardent desire for freeing the country. Coming as I do from the circle of workers who have been through the struggle for more than four decades, Sir, I cannot but recollect at least the names of some—Jatindra Nath Mookerji, Swamy Prajnananda Saraswati, Surya Sen, Bhagat Singh and others. They have also served the cause, though they are not so widely known —they have also contributed to the cause.

Now to the Draft Constitution. I am afraid the Drafting Committee has gone beyond the terms. I am afraid the whole constitution that has been laid before us has gone beyond the main principles laid down by the Constituent Assembly. In the whole Draft Constitution we see no trace of Congress outlook, no trace of Gandhian social and political outlook. The learned Dr. Ambedkar in his long and learned speech has found no occasion to refer to Gandhiji or to the Congress. It is not surprising, because I feel the whole Constitution lacks in Congress ideal and Congress ideology particularly. When we are going to frame a constitution, it is not only a political structure that we are going to frame; it is not only an administrative machinery that we are going to set up; it is a machinery for the social and economic future of the nation.

I feel, as for the economic side, the Draft Constitution is almost silent. It is rather anxious to safeguard the sanctity of property; it is rather anxious to safeguard the rights of those who have got something and it is silent about those who are dispossessed and who have got nothing. While there is much about the sanctity of property and the inviolability of property, things such as right to work, right to means of livelihood and right to leisure etc., have been left out and these things should have been effectively incorporated, in the Constitution.

[Shri Arun Chandra Guha]

As for the Fundamental Rights, Dr. Ambedkar,—he is a learned professor and I acknowledge his learning and his ability and I think the Draft Constitution is mainly his handicraft—in his introductory speech, he has entered into a sort of metaphysical debate. He has introduced a new term; I feel, Sir, there is no right in the world which is absolute. Every right carries with it some obligation; without obligation there cannot be any right. So it is no use taking shelter behind the plea that the Fundamental Rights cannot be absolute. I know these must be relative; but that does not mean that the Fundamental Rights should be negatived by putting some provisos. All the rights that have been mentioned in the Fundamental Rights section have immediately been negatived by putting some provisos and some subsidiary clauses. It would have been better for the Drafting Committee not to have provided these provisons within the Constitution at all. Then the future Government would have been able to act freely in framing the Fundamental Rights. But now as these have been incorporated within the Constitution it would be a question of amending the Constitution to make it broad-based. So I would ask the House either to put the Fundamental Rights rather frankly or to omit the whole chapter from the Constitution so that the future Government may frame the Fundamental Rights according to the needs of the time and not be handicapped with the task of amending the Constitution which has put some difficulties in the way.

Then, Sir, Dr. Ambedkar has passed some remarks about the village units. We have been in the Congress for years.We have been taught to think of the village panchayats as the future basis of administrative machinery. The Gandhian and the Congress outlook has been that the future constitution of India would be a pyramidal structure and its basis would be the village panchayats. According to Dr.Ambedkar, the villages have been the ruination of India, the villages have been the den of ignorance. If that has been the case now, that is due to us who have been living in the towns, who have been shining under the foreign bureaucracy and foreign rule. Our villages have been starved; our villages have been strangled deliberately by the foreign Government; and the towns-people have played a willing tool in this ignoble task. Resuscitating of the villages, I think, should be the first task of the future free India. I have told you, Sir, that who have been taught according to the Gandhian outlook and the Congress outlook that the future constitution of India would be a pyramidal structure based on the village panchayats.

I admit we require a strong Centre; but that does not mean that its limbs should be weak. We cannot have a strong Centre without strong limbs. If we can build the whole structure on the village panchayats, on the willing co-operation of the people, then I feel the Centre would automatically become strong. I yet request the House that it may incorporate some clauses so that village panchayats may be allowed to play some effective part in the future administration of the country.

Dr. Ambedkar has posed before us a question that they have tried to put the constitution on the basis of provinces, on the basis of some political units, on the basis of the individual as the basic unit. The village should be the real basis of the machinery. The individual is the soul of the whole constitution; but the village should be made the basis of the machinery of its administration.

Then, Sir, I would like to say something about the language. In the Draft Constitution it has been stated that Hindi and English should be freely used in this House, and other languages can be used only when the speaker is unable to express himself adequately in either of these languages, I feel, Sir, as in the Soviet Constitution, we should allow the eight or nine major languages of India to be freely used in this House. As in the Soviet Constitution, by sheer weight of number the Russian language has all the predominance, here also, Hindi would have all the predominance by the sheer weight of number.

There is no shed of doubt in the mind of any of us that Hindi is destined to be the national language and the language of the State in India; yet that should not mean that other languages which have mighty literature, mighty traditions behind them should not be allowed to be spoken in this House without the speaker declaring himself to be unable to express himself in Hindi or English. I would request that other languages should be allowed to be freely used in this House.

Mr. Vice-President (Dr. H. C. Mookherjee): Before I call upon the next member to address the House, I have here forty slips of members who wish to speak. The matter is so urgent and so important that I should like everybody to have an opportunity of airing his views on the Draft Constitution. May I therefore appeal to the speakers not to exceed the time limit which I have fixed as ten minutes?

Shri T. Prakasam : (Madras : General): Sir, the Draft Constitution introduced by Dr. Ambedkar, the Honourable Member in charge, is a very big document. The trouble taken by him and those who are associated with him must have been really very great. My Honourable friend Mr. T. T. Krishnamachari when he was speaking explained the handicap under which the Honourable Dr. Ambedkar had been labouring on account of as many as five or six members of the Committee having dropped out and their places not having been filled up. I have been attending this session regularly with the hope and expectation that the Constitution that would be evolved would be one that would meet with the wishes and desires of those who had fought the battle of freedom for thirty years, and who had succeeded in securing freedom under the leadership of the departed Mahatma Gandhi. I was hoping, Sir, having seen the Preamble, that everything would follow in regular course and bring out a Constitution that will give food and cloth to the millions of our people and also give education and protection to all the people of the land. But, Sir, to the utter disappointment of myself and some of us who think with me, this Draft Constitution has drifted from point to point until at last it has become very difficult for us to understand where we are, where the country is, where the people are, what is it that they are going to derive out of this Constitution when it is put on the statute book. Now, Sir, when a Constitution is drafted, generally, what is expected of those who are in charge of drafting the Constitution, those who are in charge of approving the constitution as members of the Constituent Assembly is, what are the conditions in the country, what is the situation in the country, are we doing all that is necessary to get over the troubles in the country? With that object, I have been waiting to learn from all Members who have been devoting their time in explaining the real position with regard to this Constitution. I feel thankful to some of those members who have not forgotten the way in which the battle of freedom had been fought in this country and how freedom had been secured. So far as the drafting of this Constitution is concerned, with all respect to the Honourable Dr. Ambedkar, I must say that he has not been able to put himself in the position of those who had been fighting for the freedom of this country for thirty long years. In one stroke he condemned the village panchayat system. He has referred to the remarks of one great man of those old days of the British, Mr. Metcalfe, and the description given by him that the village panchayats existed and continued, whatever may have been happening with regard to the Government at the top; whoever may have come and whoever may have gone, they did not concern themselves. It is not a matter which should have been treated by Dr. Ambedkar in that manner. That was a condition to which we had been reduced, after the village panchayats had been exhausted on account of the oppression of the various foreign rulers who had come over to this country. Still inspite of all that had been done for their suppression, they had survived. That is what Metcalfe wanted to explain to the world and to us who have been ignoring it. Therefore village panchayat

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is not to be condemned on that basis. I do not advocate for one moment today that village panchayat should be such as described by Metcalfe under those circumstances. Village panchayat should be one which is up-to-date, which gives real power to rule and to get money and expend it, in the hands of the villagers. I would like to know what is this Government that is being constituted under this Draft Constitution. For whose benefit is this intended? Is it for the benefit of a few people or is it for the benefit of the millions of people who pay taxes? Whether they have power or not they pay the taxes under the vicious system that had been established in this country and under which we had been groaning for a hundred and fifty years and we tried our best to get rid of that system. The British built up a system in the Centre and in the provinces in such a manner that the tiller of the soil and the labourer and other people are made to pay some tax or other to enable this Government to carry on administration from the Fort St. George or some other Fort and from this Delhi Centre or other places. What becomes of those millions who pay the taxes? The money is taken away under the British system by those people who have been established here step by step and the money is brought here and spent. How the money is spent the tax payer does not know and the tax payer has been left in the lurch. He does not know whether there is any ruler at all, even after the establishment of freedom by us, because we are perpetuating the same system and we are supposed to be governing in the name of King George. The Governor-General is appointed by the British Cabinet and our currency notes are being printed with the head of King George. To-day, after two years of establishment of freedom, we are in that condition. Therefore, it is only right and proper that this Constituent Assembly which has been sent by the people of this country should take particular care to see that this Draft Constitution of Dr. Ambedkar is so amended that it would really become a constitution for the benefit of the masses and the millions of people for whose sake the battles have been fought by that great friend who has gone away leaving us here to get along with our work. When he was alive his system and his schemes were not supported by us whole heartedly or by the millions in the country. If that had been done, as he said, within twelve months we would have established freedom. That man of vision was with us and with all the betrayal made by us, he managed to educate us and keep us calm and fought all the battles until he succeeded and gave us a scheme for the construction of the future Government. Having been the man who roused the millions of people who had been in ignorance at the bottom when he came here and lifted them up, he made them understand that 'you are all men having soul force in the same manner in which I have got. If you educate yourself and carry on my programme, you will carry out everything and you will establish freedom.' I myself, Sir, had a talk with the great Lala Lajpat Rai more than forty five years ago in England. He was the earliest of the sufferers for freedom and he said: "Look at the organization and discipline and the way in which people here conduct themselves. Can we ever hope to send away these British people from our country and establish freedom?" That was my feeling when I touched that shore. Under those circumstances it was, that this man Gandhiji came as a Seer and lifted us up and I and many friends here entered into his movement and we had been struggling on all these thirty years. The real thing has not been established. The British system drowned us and suppressed the country and made the people utterly helpless. To get rid of the capitalist system he introduced what was called the constructive programme to enable every man and woman to do his or her duty and then make themselves fit for making sacrifices and finally to send away the British. He succeeded and the people succeeded. The people must be thanked for the readiness with which they flung themselves into any ordeal whether it was one of fire or one of water. Instead of having a Constitution based on a socialist basis in the manner in which Gandhiji had

formulated for thirty long years, he divided the whole country into linguistic areas and framed the Constitution for the Congress and worked that for thirty years and it is on account of that we won the freedom—that socialist basis has all been thrown off and a capitalist basis is being introduced. That will be the result of this Constitution. To-day we are in the throes of a famine for food and cloth and I would ask Dr. Ambedkar whether this Constitution would solve any of these problems. To my mind it is not possible so long as the capitalist system of the world is kept up. You may pass so many resolutions and appoint so many committees to solve the inflation problem, but have not been able to reach that point. Therefore it is necessary that this Constitution must be amended in such a manner that the capitalist monetary system is not adopted but a more proper socialist system of our own—I don't mean to say the Russian, we had our own system and we have had our system which had been put into force by Mahatma Gandhi and worked for thirty years successfully. This type of Draft Constitution is beyond my comprehension and I would appeal earnestly to Dr. Ambedkar—I do not blame him alone. Dr. Ambedkar has not been in the battle-field for thirty years. He had not in any way understood the significance of this. He had been attacking the whole system and the programme of Gandhi and the Congress all his life-time.....

Mr. Vice-President : Order, order.

Shri T. Prakasam : If I should not say so much—I do not know—I will obey your order. The Draft Constitution has gone in a wrong direction and it requires amendment very badly. I may tell the Honourable Members of this House and you, Sir, that if this is allowed to go on in the same manner, if the same capitalistic monetary system is adopted here, we must remember what happened to other countries. The monetary system adopted by the capitalist countries of the world had proved a failure not once but twice. After the first war you have all seen what was called the world's first economic distress. Germany had become bankrupt. England had become very nearly bankrupt. Her pound became equivalent only to seven shillings in the foreign market. But for the gold that was exported from here by the kind friends of our own mercantile leaders here, the capitalists, England also would have become completely bankrupt. That is the first thing. Then the second economic distress came upon the world. You will all remember what Dalton, the British Chancellor of the Exchequer said. He said that under the changed conditions the loss sustained by Britain on account of the dollar exchange business was 13 million dollars every day. And the whole system was going to collapse. If that had not been prevented by this Marshall Aid system they would have been perhaps in a worst position. Today England is suffering that way. I therefore warn Honourable Members of this House not to plunge this country into such an economic condition by adopting this Draft Constitution without making necessary changes when the amendment stage comes. I have been waiting to see whether any light would come—whether any day would come with regard to these things. Sometimes I put myself in communication with the Finance Minister, who is not to be found here, with regard to the monetary system that should be adopted. (At this stage Mr. Vice-President again rang the bell). Well, Sir, I stop.

Shri Vishwambhar Dayal Tripathi (United Provinces : General): Sir, I wish to draw your attention to one very important matter. We are discussing a very important subject and it will be very difficult for any one of us to compress our ideas in ten minutes. I would therefore request you to relax your rule and to give us time to express our ideas freely and fully. The other day when we made this request to the Honourable President we were assured that we shall have full and ample time for discussion. I hope you will kindly accede to our request.

Mr. Vice-President : As a matter of fact yesterday every honourable member exceeded the ten minutes limit. I am in the hands of the House: I can give any amount of time you want. But after all there must be some definite rule.

Prof. N. G. Ranga (Madras : General): Sir, you have said that yesterday every Member was exceeding the ten minutes limit. As an experienced speaker I would like to say how annoying and how trouble some it is for a speaker to be reminded by your bell that his time is up. There is considerable force in what my Honourable friend has said, namely, that it is impossible for any one to develop any point satisfactorily within the short space of ten minutes. It is necessary that the period should be extended at least to twenty minutes and if necessary, the general discussion should be extended by one day more.

Mr. Vice-President : Are you prepared to give one day more to the general discussion?

Many Honourable Members : Yes.

An Honourable Member : What about those who have already spoken and taken only ten minutes time?

Dr. Joseph Alban D'Souza (Bombay : General): Mr. Vice-President, never before in the annals of the history of this great nation, a history that goes back to thousands of years has there ever been, and probably will there ever be, greater need—nay, Sir, I may even say as much need—as at this most vital and momentous juncture when this Honourable House will be considering clause by clause, article by article, the Draft Constitution for a Free, Sovereign, Democratic Indian Republic—as much need for a quiet and sincere introspection into our individual consciences for the purpose of giving unto Caesar what unto Caesar is due; as much need for a keen spirit of fraternal accommodation and co-operation where by peace, harmony and goodwill will be the hall-marks of our varied existences individually as well as collectively; as much need for a sufficient breadth of vision so that the complex and the difficult problems that we have to face in connection with this constitutional set-up may be examined primarily from the broader angle of the prosperity and progress of the country as a whole; and lastly, as much need for an adequately generous and altruistic display of that well-known maxim "Love thy neighbour as thyself", so that in the higher interests of the nation as a whole, sentimental, emotional, parochial particularisms may not be allowed unduly to influence the decisions of fundamental policy affecting the nation as a whole.

It has been admitted by several Members—practically by every Member who has spoken before me—that the Draft Constitution is an excellent piece of work. May I say that it is a monumental piece of work put up by the Honourable Dr. Ambedkar and his Drafting Committee after months of laborious work which may definitely be qualified as the work of experts, work which is comparative, selective and efficient in character right from the beginning to the end.

After these general remarks on the approach to the examination of what the Honourable Mover in his speech styled the formidable document before this Honourable House, which he has told us is the bulkiest amongst all the Constitutions in the world, containing 315 articles and as many as eight Schedules, after indicating to the Honourable Members of this House what ought to be the approach to the consideration of this fundamental document, I crave your permission to refer to a few items in the context of the Constitution. As a Member of the Advisory Committee for Minority Rights. I have been and am particularly interested in the Justiciable Fundamental Rights. I feel at this juncture that it is my bounden duty to express my gratitude in the highest form possible to the Honourable Sardar Vallabhbhai Patel, the

Chairman of the Advisory Committee for the highly satisfactory and equitable manner in which these rights have been meted out to the minorities by the majority party. I feel sure, Sir, that it is this satisfactory and equitable deal that will make the minorities cling to the majority through thick as well as thin. Sir, it is my earnest hope that these rights as they are laid down in the Draft Constitution will not be permitted to suffer in any way whatever during their transit through this Honourable House.

Whilst I am on the subject of minority rights, there is one humble submission that I would like to place before the Honourable Mover of this Resolution. It is in connection with Article 299 of the Draft Constitution which says:

> "There shall be a Special Officer for minorities for the Union . .... and a Special Officer for minorities for each State..... who shall be appointed by the Governor of the State."

Necessarily, Sir, the Special Officer of the Union is under the Central Legislature, but what I would submit to the Honourable House is that some modifying measure should be introduced where by while the appointment of the Special Officer at the Centre is by the President, in the nine States it should also be by the President. In some way or other these Officers in the States should be made responsible to the Centre. If that is done, I dare say work in the States by these Officers will be done without fear or favour. It is a submission that I make and I do hope that if it is in any way possible a modification should be made with the object of making the Special Officer in the State responsible to the Centre.

The other submission is also on the subject of minority rights and deals with the right to constitutional remedies in Article 25. Ordinarily, as the Draft Constitution stands, only the Supreme Court will be dealing with these cases. But, Sir, I wish to point out to this Honourable House that most of the cases will be concerning the poorer section and poor classes of our citizens, especially amongst the masses. There is a provision made in sub-clause (3) that Parliament may by law empower other courts than the Supreme Court to deal with such cases. But what I submit is that rather than wait for Parliament in time to come to introduce legislation to empower other courts, it should be done here, and it would ease the situation of the poorer class of people particularly the masses, if by means of modification something is introduced straight away, not waiting for parliamentary measures or enactions later on.

Sir, the last point I wish to make naturally arises from the suggestions I have already made with reference to the Special Officer for minority rights being made-responsible to the Centre. I am sure the Honourable House has already made out that I am for a very strong Centre. The stronger the Centre the greater will be the consolidation of the State services and State work. The history of India shows that for want of strength in the Centre, empires have passed away and dynasties have disappeared. The question of a strong Centre may be considered a paramount one and this is what will have to be done if we want to maintain the freedom achieved after centuries of foreign domination. A strong Centre is absolutely necessary in order to consolidate the entire Union, and I do hope that the Constitution as it is laid out will be passed with the three subjects: Union subjects, Provincial subjects and the Concurrent subjects with residual powers given to the Centre as indicated in the Constitution.

Sir, I am thankful to you for giving me the opportunity of expressing my views on this Draft Constitution.

The Honourable Shri K. Santhanam (Madras General): Mr.Vice-President, we have come to the last and the most difficult stage of our work. While I am anxious that we should finish this work as expeditiously as possible, we may

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not forget that we are making the Constitution of India and that for mere speed we should not sacrifice a proper and careful consideration of the provisions which may affect the welfare and the future of this country.

The Drafting Committee have done a good job of work, but at the same time I am afraid they cannot escape two valid criticisms. The Committee, I think illegitimately, converted themselves into a Constitution Committee. They have taken upon themselves the responsibility of changing some vital provisions adopted in the open House by this Assembly. They have also felt themselves entitled to reject the reports of committees appointed by this House. (Hear, hear. I happen to be a Member of the Committee which reported on the future constitution of Delhi and the Centrally administered Provinces. It is true that the report of that Committee was not discussed in this House and no decisions were taken, but I think the recommendations of that Committee were more entitled to be embodied in this Constitution than the views of the Drafting Committee.(Hear, hear). Sir, I shall not labour the point and I leave it to the House to judge when the clauses come up which proposals the House will choose to accept. But I would confine myself today to discuss certain fundamental principles which were touched upon by the Mover of this Resolution.

Dr. Ambedkar rightly stressed those aspects of our Constitution which make for rigidity and flexibility and he claimed that the Constitution of India as drafted is more flexible than the American Constitution or other federal constitutions. But I venture to suggest that flexibility is not always a virtue. The constitution of a country is like the human frame; certain parts of it have to be rigid in order that the constitution may endure; there will have to be other parts which will have to be flexible. So, I would like you to concentrate on those parts which have to be rigid. I think it is dangerous to compromise with fundamental principles. We may think it is expedient to compromise with them for the necessities of the moment, but once we compromise on fundamental principles that compromise becomes a canker in the Constitution and will finally destroy it.

Sir, what are the fundamental principles which are sought to be embodied in this Constitution? First of all, there is to be a single, equal and secular citizenship.Secondly, there is to be adult franchise. Thirdly, it is to be a Federation. Fourthly, there is to be a responsible type of executive. I suggest that we should examine the provisions of the Constitution to see whether every one of these principles has been embodied to the fullest extent.

Take for instance the principle of single, equal and secular citizenship. These are said to be protected by the Fundamental Rights. But Dr. Ambedkar himself admitted that every one of the Fundamental Rights is subject to a large exception. He said that even in the United States of America, the Supreme Court has had to modify these Fundamental Rights. That is quite true. But even our Supreme Court will have to deal with these Fundamental Rights. While it was the function of the Supreme Court of the United States of America to restrict the scope of the Fundamental Rights by considering the necessities of the State, it will be the duty of the Federal Court or the Supreme Court of India to restrict the scope of the limitations. For, if the limitations are to be interpreted broadly, then we may as well omit the Chapter on Fundamental Rights altogether.

Sir, I think we should scrutinise these provisions and see that the limitations imposed are as narrowly and as strictly defined as possible, because in these days of emergencies and emergency powers, it is essential that some at least of the Civil liberties of the people should be preserved by the Constitution. It should not be easy for the local legislatures and even the Central Legislature to take them away altogether.

Sir, there is next the question of adult franchise I wish that we could adopt it as a principle that it should be the duty of the Central Government to compile and maintain the Registers or Rolls of adult franchise throughout the country, because we know that Provincial Governments and local Governments who modify these rolls on linguistic and other secular considerations are not unlikely to be a little lax in the careful preparation of these Registers or Rolls (*Hear, hear*). There may be defects. For instance, there was an attempt by Madras to compile a register of voters. It was all done in a single day or two days and there are complaints that 50 per cent of the voters of the city have been left out. In this particular instance, there was no motive. But, administrative efficiency and thoroughness in the compilation of these Registers was not observed. Sir, we feel we could not be too careful or too watchful in this matter. We want every citizen of India to be automatically included in the Register and his right to be in the rolls protected, by all means possible in the Constitution. Therefore, I would suggest to this House that they should consider the desirability of placing the responsibility of preparing and maintaining this Register on the Central Government itself. Now the Central Government has the responsibility of taking the census of India at ten-yearly intervals. I think we may create a permanent machinery which will not only take the ten-yearly census, but also maintain the Registers of adult franchise throughout the country so that there could be no complaint about and no manipulations of these Registers.

Sir, Dr. Ambedkar spoke of the dual polity. Now we have got three Lists—the Federal List, the Provincial List and the Concurrent List. The Drafting Committee has expanded the scope of the Concurrent List. We have had experience of the Concurrent List. It tends to blur the distinction between the Centre and the Provinces. In the course of time it is an inevitable political tendency of all Federal Constitutions that the Federal List grows and the Concurrent List fades out, because when once the Central Legislature takes jurisdiction over a particular field of legislation, the jurisdiction of the provincial legislature goes out. Therefore we may take it that in ten years or fifteen years' time the entire Concurrent List would be transferred automatically to the Federal List. We must reflect whether this is what we want and whether this is desirable. If we do not want it we will have to see that the Concurrent List is either restricted to the minimum or define the scope of the Central and Provincial Jurisdiction in regard to matters mentioned in that List.

Then I come to the question of the responsible or cabinet type of executive. It is of the utmost importance in every responsible government that the frontiers of responsibility should be clear and definite. There should be no ambiguity about it. When once responsibility is blurred, the cabinet type of government is automatically annulled and we get near the presidential type of Government. I do not myself object to a presidential type of government and it may quite suit the country. If necessary, the Centre and the Provinces can adopt a Presidential Chapter knowing all the implications and the consequences. In many cases I think the presidential type is superior and much better suited to India. It confers stability and I think stability rather than flexibility is the need of the hour for India. But let us not adopt the cabinet type and then try to undermine it by all kinds of devices.

Take for instance the Instrument of Instructions to the President and to the Governors. Originally there was only an Instrument of Instructions to the Governors. Now the Drafting Committee have put in a Chapter on Instrument of Instructions to the President. What happens if the Prime Minister of India ignores these Instructions? Will the Governor-General tell him, "Now according to the Constitution it is my right to insist on the Instruction?" There is a possibility of conflict between the President of India and the

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Prime Minister and the Cabinet. Similarly in the provinces also. These Instruments of Instructions may bring about a conflict between the provincial Ministries and the Governor. I think if we are going in for responsible government, we should go in for it full and entire. Let us not compromise on fundamental principles, because compromise on fundamental principles will land us in all kinds of dilemmas and anomalies and it will not be easy to saddle the Constitution with different methods to deal with each dilemma.

Within the time at my disposal I have tried simply to touch upon certain points of importance which will have to be discussed thoroughly when we take up the Articles of the Draft Constitution.

Sir, there are, however, one or two vital matters which have to be considered in particular. For instance, take the provisions for changing the Constitution. It is provided that the change can be effected only in one sitting by acertain majority in both Houses. I think in the matter of a Constitution changes should not be allowed easily, because political parties may come into power owing to sudden changes in national feeling. The Constitution should be considered as the spinal chord. If it is more flexible than necessary and if it is altered every now and then, simply because a party has got majority in the legislature, then the whole basis of democracy will go to pieces. I think therefore the provisions regarding changes in the Constitution require to be carefully thought out. Changing the Constitution should not be made easy. At least if the changes on most important matters are vested in the Parliament, I would suggest that it should be not only by a larger majority than the actual majority but that it should be done at least twice over after an interval of six months or one year. We may thus ensure that the changes in the Constitution are brought about with a full realisation of the consequences. We should not change our Constitution hastily. Canada has not changed her Constitution ever since it was set up. Has she suffered for it? The United States of America changes its constitution only very rarely.

I think a rigid Constitution is for more important for stability than flexibility and ease in changing the Constitution. The Constitution is the bone work of our freedom, and bones must be rigid rather than flexible.

Sir, I am sorry that Dr. Ambedkar went out of his way to speak about village panchayats and say that they did not provide the proper background for a modern constitution. To some extent I agree but at the same time I do not agree with his condemnation of the village panchayats and his statement that they were responsible for all the national disasters. I think that in spite of revolutions and changes, they have preserved Indian life and but for them India will be a chaos. I wish that some statutory provision had been inserted regarding village autonomy within proper limits. Of course there are difficulties because there are villages which are very small and there are big villages, and many of them may have to be grouped for establishing panchayats, but I do think that at some stage or other when all the provinces have set up panchayats, their existence may have to be recognised in the Constitution, for in the long run local autonomy for each village must constitute the basic framework for the future freedom of this country.

Sir, I am finishing in a minute. There is only one more point. I shall merely touch upon it. I agree with the mover that the artificial distinction between Provinces and States should vanish as quickly and as speedily as possible. The only impediment is that certain financial interests have developed owing to the possession of Central subjects by the States, and if we can find a formula to protect the States from the financial consequences of adopting the same constitutions as the provinces, the States may not object to fall in line with the provinces. Therefore I suggest that we should adopt the principle that no State should suffer by falling in line with the provinces

and let us give them a guarantee that they will be recouped from Central funds for any loss caused by falling in line with the provinces. I suggest that we may consider a formula for protecting them against any kind of financial suffering on account of becoming identical with provinces. I agree that we should not have the anomaly of having A class States and B class States which will only cause confusion. If possible, I would like that all these different categories of units should be abolished. There should be only one standard unit constitution with freedom for these constitutions to adjust themselves to local circumstances.

Sir, owing to the rigid time limit which I fear is not conducive to a proper discussion of the Constitution, I have confined myself only to a few points. I hope they will receive the consideration of this House.

Shri R. K. Sidhwa (C. P. & Berar : General). Mr. Vice-President, Sir, as an able and competent lawyer, the Honourable Dr. Ambedkar has presented the Draft Constitution in this House in very lucid terms and he has impressed the outside world and also some of the Honourable Members here, but that is not the criterion for judging the constitution. This is a Constitution prepared for democracy in this country and Dr. Ambedkar has negatived the very idea of democracy by ignoring the local authorities and villages. Sir, local authorities are the pivots of the social and economic life of the country and if there is no place for local authorities in this Constitution, let me tell you that the Constitution is not worth considering. Local authorities today are in very peculiarly miserable condition. The provinces which complain that the Centre has been made too strong and that certain powers have been taken away from them, have themselves in the intoxication of power taken away the powers of the local bodies, and in the name of mal-administration today more than 50 per cent of the local bodies have been superseded by Provincial Governments. Sir, this was the attitude in the previous British regime, and our Provincial Governments are merely following that practice instead of revolutioning the entire system of local bodies. Unless a direction is given in the Constitution to Provincial Governments to make these bodies very useful organisations for the uplift of villagers, let me tell you, that this document is not worth presentation in the name of democracy. The finances of the local bodies are in a miserable condition. The Provincial Governments would not like to give them the electricity taxes, the entertainment taxes, etc. which are the only sources of revenue for these local bodies in Western countries. Here in this country all these taxes are grabbed by the provinces. This has left the local bodies mere skeletons today. If this is the tendency, how can you expect the local bodies and villages to prosper? His Excellency the Governor General in his recent speeches and also our Deputy Prime Minister in his speech in Bombay stated that every villager must be made to understand that he is responsible man or a responsible woman and made to realise that he or she has got a share in the administration of the country. I fail to understand how this can be done if you ignore the villagers, the largest portion of the population?

You will merely be taking power into your hands and make some improvements in the top, but the masses of people are struggling today to become happy and you will be nowhere helpful to them. On the contrary the present feeling that the masses have been neglected will be intensified if we pass this Constitution without really making a reference to the points that I have mentioned. Dr. Ambedkar, Sir, has made a confession rightly that many of the provisions of the various constitutions in other countries have been borrowed and inserted in this Constitution. I personally think that there is nothing wrong in borrowing some good provisions that may be existing in other countries. The only thing that has to be seen is that these provisions which may be beneficial in those countries may be equally beneficial in this country also. I,

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however, see from Schedule 7—they are important lists — that the Union Power List, the State List, the Provincial List and the Concurrent List, have been copied wholesale from the1935 Act, barring a few changes here and there. I do not know whether they have taken care to enquire from various provincial Governments whether they have found loop-holes. I will mention one or two items. The terminal tax, the profession tax and the levy of taxes on Government of India buildings, have been the bone of contention between the Provincial Governments and the Central Government, in as much as in some cases the matter had gone to the Federal Court. It seems to me that the Sub-Committee have merely copied all these items without giving any consideration to the hardships that have been imposed by the Provincial Governments. I, therefore, feel that these three lists when they come before the House should be given due attention by the House. Last time when we met this list came before us and the time was not sufficient and we left it as they were and I hope very minute consideration will be given to this list which is as important as any other provision of this Constitution.

Coming to the Fundamental Rights, I do not know whether the Committee had the power to upset the unanimous decision of this House. The sub-Committee is perfectly justified in making recommendations, I do not dispute that and these are also recommendations, I admit. But on a fundamental matter when the House after mature consideration had taken a decision on a basic principle on the Fundamental Rights, I feel that they have exceeded their rights in making even those recommendations.

I will only give one illustration. The Constituent Assembly in its last session passed the Fundamental Rights:

"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."

The Drafting Committee have made a change in this, a revolutionary change, I should say and put before this Honourable House. I will read their recommendation:

"No person shall be deprived of his life or personal liberty except according to procedure established by law....."

The remaining words have been deleted. We will take this matter up when the occasion arises. But Sir, I do feel that in the Fundamental Rights that we passed last time there was already a grievance that we have not gone to the extent to which we should have and if you are going to curtail even those rights of the citizen, I do feel, Sir, that the very nomenclature of the Fundamental Rights would be ridiculed.

I was really impressed with one point that was raised in regard to the constitution of the States. I endorse what he has stated in this respect. When we made this Constitution last time the conditions of the States were quite different than what they are today and I fail to understand why there should be a separate Constitution for each new State. There should be a provision that all States should adopt the provincial part of this Constitution. Instead of the Governor, the ruler should be the Governor and likewise certain other changes, but there should be no separate Constitution for each State. After all they have all acceded to the Indian Union and their laws should be the same laws as ours. It is not one-man rule now and I fail to understand how there can be two laws functioning in one country when all States are part and parcel of our own kith and kin in this Union. I therefore, feel, Sir, that very serious consideration has to be given to this question as to whether we can allow the States people to prepare their own constitution which may go against the very fundamentals of the main Constitution that we are now preparing. In the Fundamental Rights they may go somewhere lesser than we have decided. In many of the matters they may go against what we have finally provided for every citizen of this country.

Sir, take for instance the High Courts. Today in the High Courts of India the best men are on the benches. They are first-rate men and even their judgments are appealable to the Federal Court and to the Privy Council; but in these second-rate High Courts in the States—I do not mean any disrespect by stating second-rate, but it is a fact that they are not first-rate men — their judgments are not challengeable in a Federal Court. Is that fair, I ask you that you do not give this right to the citizen of a State? I therefore feel, Sir, that this matter also will have to be very seriously considered and to make the work of the State people very easy, provincial part of this Constitution should be absolutely made applicable to them, barring a few changes.

Lastly, a reference has been made about the reservation and protection for minorities. I have remained in this Minority Committee and Sub-Committee of the Minorities and I am really thankful to the majority community for the manner in which they have dealt with the minority question and I must say that there should be no complaint from any quarter in this respect. As far as our community is concerned, although the offer has been made for the reservation of seats, we have refused it with thanks. Similarly, yesterday Kazi Syed Karimuddin insisted on removal of reservation of seats. This statement even at a later stage is very welcome. Just as when the majority community offered the reservation of seats to the Parsi community, we said: "No, thank you, we do not want," similarly all the groups, I expect, Sir, will refuse with thanks the offer of the majority.

Maulana Hasrat Mohani (United Provinces : Muslim): Mr. Khaliquzzaman wanted reservation and not Syed Karimuddin.

Shri R. K. Sidhwa : I do not follow. I therefore appeal that this communal poison should be removed from this country and this Constitution should be made into a document about which we could feel proud and we should be able to say to the world that this is a document which the Indian people have made for others to imitate. With these words, Sir, I end. I hope that some of the points which I have mentioned will be borne in mind when the time comes. Thank you, Sir.

Shri Ram Sahai [United State of Gwalior-Indore-Malwa (Madhya Bharat)]: *[Mr. Vice-President, Sir, many Members have shed light on a number of points relating to the Constitution. I shall not go over them again. I shall only speak a few words in regard to the States. I would like to make it clear to the House that the people of the States are in favour of a strong Centre and would whole-heartedly support the establishment of a strong Centre in this way. I submit, however, that much thought does not seem to have been given to the States in the Constitution that has been placed before us. I would like to illustrate this point by one example.

In Schedule I, Part III, the States have been specified as they had been in the past, although a number of States have merged to form Unions and have in a way given themselves the character of a province. Madhya Bharat Union may be taken as a case in instance. The Raj Pramukh of Madhya Bharat signed a new Instrument of Accession on June15, by which all the subjects mentioned in the first and third lists of Seventh Schedule excluding taxes and duties, have been handed over to the Centre. This means that even the Judiciary has been subordinated to the Centre. But even then no appeal can lie to the Supreme Court from the decisions of its High Court under Sections 111 and 113 of the present Draft. When the Madhya Bharat Union has, by its new instrument of accession surrendered all its rights, transferred all its powers to the Centre and agreed to all its proposals, I cannot see why a provision has been made prohibiting appeals being made to the Supreme Court against the judgments of the High Court of the Union.

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* [ ] Translation of Hindustani speech.

[Shri Ram Sahai]

Section 113 lays down that a reference can be made to the Supreme Court. But I fail to understand why an appeal against the High Court cannot be admitted in the Supreme Court. This is a matter which particularly affects the rights of the people. I submit that a single provision of such a type would have been sufficient for the protection of the rights of the people. Our efforts to bring the High Court of the Union, into line with the Provincial High Courts would be facilitated and would be crowned with success if these High Courts are made subordinate to the Supreme Court. And this step would also considerably facilitate the attempts to bring the Unions into line with the Provinces. It may be said that the High Courts are not sufficiently developed there but so far as the High Courts of Gwalior and Indore are concerned I can say with some pride that they are in no way inferior to the High Courts of the provinces, nor do they have lesser standing. They too have as learned Judges as have the High Courts of the provinces.

Honourable Dr. Ambedkar wants that Constituent Assemblies may not come into being in the States. But I think that if Dr. Ambedkar had been a little in touch with the Ministry of States regarding this matter and had placed it before that Ministry, these complications, that have been introduced now, would not have arisen at all. I would place before him the matter of the Constituent Assembly of Madhya Bharat as a case in point. An interim legislature is being formed there and a Constituent Assembly will also be formed. What may possibly be the necessity of forming these two at the same time? There will be interim legislature there and after that the Constituent Assembly will be formed. No session of the interim legislature is in view as yet and it is yet to be seen when the work of the Constituent Assembly would start. The members of the interim legislature are here in this Constitution Assembly to frame the Constitution. I fail to understand why these people who can make laws in the legislature and are framing the Constitution here, cannot frame the Constitution there. Such complications have been brought in. I am sure that if Dr. Ambedkar had consulted Sardar Patel in this matter, many problems would have been easily solved.

No necessity now remains for the Constituent Assemblies that have been formed or are being formed in the States particularly when almost all the States have taken the shape of provinces.

I would like to submit to the House that the third part of the First Schedule should be revised and the Unions, wherever they have been formed, should be included in the first part. Such an inclusion will result in bringing the States up to the level of the provinces—the only remaining difference would be that the Governors of the provinces would be elected by the public, while the Rajpramukhs of the States would be elected by the princes. As remarked by Messrs. Santhanam and Sidhwa, it would be very advantageous to put the provinces and the Unions on the same footing and in my opinion such a step is both necessary and essential. We should revise the parts of both these schedules, and they should be redrafted in such a way that the States which have already formed Unions be brought to the level of the provinces.

The Committee of experts appointed in connection with the financial provisions has decided that within ten years all the States should at least be brought to the level of the provinces. I find that there is nothing in this Constitution which would permit the report of the committee of experts being given a practicable shape. I would therefore request the drafting Committee that it should make some such provisions by which States which have merged to form Unions should be brought to the level of the provinces. And there should remain no difficulties in respect to this matter.

I would like to submit to the House one thing more, and it is that the big States like Mysore and Travancore, which claim a better position than most of the provinces, should—and I request the rulers and representatives of these states to give up their interests in this aspect—accept the same status as is enjoyed by the other provinces. All there sources, which are not essential for the State, should be handed over to the Centre. In this way we can all help to build up a strong Centre. One cannot fail to understand that like other States Gwalior State could have maintained its separate existance. But the ruler of that State himself realized this necessity and handed over all his powers to the Centre. Just as this Constitution is meant for the people of the provinces similarly it should be for the people of the States also. Hence I would like to submit to the House and more specially the Drafting Committee that they should adopt some such device that those Unions which have assumed the form of provinces and the big States which have not merged into any Union may be able to attain uniformity in this respect.]

Shri Jainarain Vyas (Jodhpur): *[Mr. Vice-President, Sir, Dr. Ambedkar and his colleagues as also the typist and copists have to be thanked for the labour expended inpreparing the Draft Constitution that is before us. This is a very big Draft and many things have been included in it. But, as is the case with all drafts prepared by men, this Draft too has many defects. In particular, the use of the word "State" which has not been defined at any place is, in a way, very confusing to all of us. What a State means from the territorial or regional point of view is left entirely vague. Its definition is not given at any place therein. From the point of view of rights of citizenship also it cannot be gathered what the term "State" means. For purposes of Fundamental Rights the term "States" has been made to include Legislatures of the States, Local Governments and the Governments of the States. As the word "State" was generally used for Indian States, it would have been better if some other word had been substituted for it.

States too have been divided into different categories. There are Governors Provinces and Chief Commissioners' Provinces and the third category would consist of what are called States that is to say, Indian States. They are specified in Schedule I, Part III. I support the view of Dr. Ambedkar, which he expressed in the course of his speech, that the States should be as big as the provinces and they should be in line with the provinces. In fact we the people living in States cannot do justice to out economy by remaining in small territories nor can we properly carry on our administration. But at the same time we would like to tell Dr. Ambedkar and his colleagues that they should have also shown some anxiety to bring us into line with the provinces. In Schedule I, Part III, they have divided us into small units. We should have been grouped into larger units even there. States, that is to say Princes' States have not been given the right of appeal to the Federal Court by the article providing for appeal to that Court. Only the provinces can avail themselves of that right of appeal. Why have we been made Harijans in the matter of appeals to the Federal Court? This policy of treating the people of States as Harijans in the matter of appeal to Federal Court reveals that even you have not cared to form big units. On the contrary I find that you are keeping some mental reservations. You say that we should form big States but then it is your duty that you should grant us our rights. Mr. Sidhwa observed just now that we should come on at par with the big provinces. I ask, who does not want to come on at par with them? But you say that the Princes of the States and the people of the provinces can be Governors. Why do you not give this opportunity to the people of the States? If you really mean that the States and Governors' Provinces are of two different categories, you should say it

* [ ] Translation of Hindustani speech.

[Shri Jainarain Vyas]

clearly, as also that you want to keep this reservation in respect to the States—that you will keep some such matters excluded and will not give them to the people of the States. You should be quite frank in these matters. On the one hand it is said that the States should be brought on a par with the Governors' Provinces and on the other that the people of the States will not be entitled for appointment as Governors though the Princes of the States may be so appointed. I do not appreciate this distinction. I think that this is a defect in this Constitution and it should be removed.

Another observation which I would like to make is in regard to the territories of the provinces. It has been provided in this Constitution that some territories of the provinces can be separated from them and joined to other territories, that two or more territories can be joined together to form a province. The condition for forming such provinces is that either the legislature of the State or its members or the majority of the members should submit to the President of the State that they want to form a separate province for themselves. But in this matter too a reservation has been kept against the people of the States which are specified in Schedule I, Part III. The States are not permitted to form a big unit by submitting a proposal through their legislatures or through the Members of their legislatures. For that the consent of the State is necessary. I do not understand what "consent of the State" means. If the legislature of the State consents, if its members consent, it should have been taken to be the consent of the State. But perhaps "consent of the State" means "consent of the ruler". If it is not so, will a referendum be held or will it be ascertained by some other system? If consent of the State does not mean consent of the ruler, it should be stated clearly. Therefore, I think that so far as the States are concerned, the constitution is not fully clear.

I would like to make one or two other observations about this Constitution. I admire that equal rights have been given to all classes of people but I cannot say whether it is deliberately or otherwise that while the people have been given the right of access to Dharamshalas and wells, they have not been given the right of entering temples. I cannot say whether the fact that while the Harijans have been given the right of access to wells, Dharmashalas, etc., they have not been given the right of entering temples came under the notice of Dr. Ambedkar. I think that it is either a mistake or an omission. If it is an omission, it should be provided for.

There is no doubt that it has not been considered necessary to differentiate between the minorities and the majority and the citizens have been considered citizens in a general sense but even then it has been accepted that if some educational institutions are run by the minorities, the State should be able to aid them. It means that under this Draft it would still be possible to run the existing communal schools and educational institutions. *I do not think that it is right to leave scope for such a possibility when we are free and the people of the minority communities and the majority community have to live as brothers.* But the system of Grants-in-aid to such institutions would produce only such a result.

I have to make only one more observation and that is about the language. A number of our brothers have spoken about it. An Honorable Member went so far as to remark that Hindi Imperialism is being established here. Another Honourable Member said that linguistic fanaticism is being fomented here. I would like to tell them that no question of Hindi imperialism or linguistic fanaticism is involved, when we say that we should have a national language of our own. When we can adopt English I do not understand why we cannot adopt Hindi. If you do not want to adopt Hindi, have courage and say that English is our national language. But you do not say that. When English

is not our *lingua franca* it is not right that we should not allow another language to become the national language. I sympathise with those who say that they cannot understand Hindi but at the same time I would say that they should now try to evolve a national language of their own. If we do not do so there is not so much the danger of the imposition of the English language as of the question of linguistic provinces taking the form of linguistic countries. We do not say that all the people should speak one language only. So long as they cannot do so they may speak English—no one will prevent them from doing so. I am speaking Hindi although my language is Rajasthani which is different from Hindi and has some peculiarities not to be found in Hindi. But at the same time I know that the largest number of people can speak Hindi and can learn Hindi. Therefore we should adopt one national language. I hope there will be no misunderstanding about those who are trying to make Hindi the national language, that they want to establish supremacy of that language. They only want one national language in the interest of our country. It does not mean that the provincial languages will be put under any ban or that English will be bereft of the position it has attained. It may be that in the long run English may no more be there.

With these words I support the Draft Constitution placed before us by Dr. Ambedkar and I hope he will try to incorporate the changes that have been suggested.

Shri B. A. Mandloi (C. P. and Berar : General): Mr. Vice-President, Sir, Dr. Ambedkar, Chairman of the Drafting Committee, in a very lucid speech explained the salient points of the Draft Constitution. In answer to the questions which are raised, namely, what is the form of the Government and what is the constitution of the country, he has pointed out that it is a federal type of Government with a strong Centre and a parliamentary system of Government with a single judiciary and uniformity in fundamental laws. He has also said that the emphasis has been placed on responsibility rather than on stability. It is strong enough in peace-time as well as in war-time. He has answered in his speech the various criticisms levelled against the Draft Constitution and I submit that his speech is a very lucid exposition of the Draft Constitution. The Draft Constitution prepared by the Drafting Committee is based on the reports of the various Committees, namely, the Union Power Committee, the Provincial Constitution Committee, the Advisory Committee and the Minority Committee. The Constituent Assembly in its very first session passed a Resolution with respect to the objective of our Constitution. That Resolution was moved by our respected leader, Pandit Jawaharlal Nehru, and was unanimously passed. We have to see that our Constitution is based on that fundamental Resolution—on that Objectives Resolution—in which the claims for justice, liberty, equality and fraternity had been granted. I submit that the Draft Constitution is a true reflection of the Objectives Resolution and therefore we can say that it has fulfilled our object.

There is another touch-stone with which to see whether the Draft Constitution answers the purpose of our country and our nation. That touch-stone is whether it would maintain our freedom, our independence and our democratic, secular Government. I am of opinion that, looking from that point of view also, this Draft Constitution serves our purpose.

There are, however, certain omissions and certain things which are not found in this Draft Constitution and proper emphasis has not been placed on those subjects. The omissions are with respect to our National Flag and National Anthem. In a Draft Constitution and in a Constitution which is going to govern our country, there should be a proper place for the National Anthem and for the National Flag. There is also a necessity with respect to a common language and a common script. We should be definite on this because after all our aim is to be one nation and one State. In the absence of one common

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language we cannot claim to be one nation and one State. Taking into consideration the various languages prevailing in our country one can say without any controversy that the place of honour should go to Hindi and the script should be Devanagri script. We should bid good-bye to the English language as early as possible because it would be derogatory to our nationhood if we adopt a foreign language. The Hindi language is spoken and understood by a vast majority of the people in the country and the Devanagri script is a very scientific script and it should be adopted as the official script of our Government.

While we have attempted to make the Centre quite strong, I submit that we have not paid sufficient attention to our Provinces. The Provincial budgets are poor budgets and there is a chronic poverty prevailing in the Provinces. The responsibilities of the Provinces are great. We have to fight ignorance, disease and so many other things and we have to carry on nation-building departments and the constructive work in the provinces. The allocation from the Central revenues to the provinces should be on an equitable basis so that the Provinces may be able to discharge their duties properly and efficiently.

In his speech Dr. Ambedkar made an appeal with respect to the States — that the States which have formed into units and acceded to the Union should also be on a par with the Provinces. We would certainly like to see that uniform laws prevail there also and the level of progress is maintained in the States in a uniform manner. I therefore would suggest that in the Draft Constitution we should not make a distinction between the units of the provinces and the units of the States. We have got representatives of the States and we can, in consultation with them, bring the States to the same level as the other Provinces shown in Part I of the Constitution.

Something has been said with respect to the minorities. The Advisory Committee on Minorities has recommended certain safeguards for the minorities. Though the future relationships are going to take place on the basis of joint electorates, these safeguards have been provided. Sir, I submit that these are days of voluntary surrenders. In the year 1947 the British, after a rule of a hundred and fifty years, surrendered voluntarily though there was the fight of the Congress going on for so many years. Then we found that the Rulers of the Indian States have also surrendered. And I feel sure that if the minorities were to surrender the safeguards, they would be in a better and stronger position and they need not have any fear from the majority. If they surrender the safeguards and join the majority, coalesce with the majority and merge with the majority, we would have a stronger India and our ideal of nationhood would be realised earlier.

Sir, our Constitution is a Constitution which has been evolved by us from a comparison of the various constitutions prevailing in the civilized countries all over the world.Various good points from all the constitutions have been taken with such modifications as are necessary in the interests of our country. If we faithfully and honestly workout the Constitution, I feel sure that our country would be prosperous, would be happy, would be strong, and we would be able to maintain our independence and not only maintain our independence but would be fulfilling the great mission of our departed leader, the Father of the Nation, who said that hereafter India would be in such a position as to free the other dependent countries and bring peace and prosperity in the whole world.

With these words, Sir, I submit that the Motion moved by Dr. Ambedkar be accepted by the House.

Pandit Balkrishna Sharma (United Provinces : General) : Mr. Vice-President, Sir, so many friends have come here and offered their congratulations to the Honourable the Law Minister who was in charge of this Draft Consti-

tution that it will sound almost a tautology if I repeat the same sentiments again. But I think I will be failing in my duty if I do not offer my humble and respectful congratulations to the learned Law Minister for the very lucid manner in which he has presented this Draft Constitution for our consideration.

Many friends and critics have come here and levelled certain charges against our Constitution. The one charge which has been repeated by many friends is that ours is a very bulky Constitution. The Mover himself referred to the bulky nature of this document. When we really examine the clauses and articles of the various other Constitutions we come to the conclusion that ours is indeed a bulky Constitution. Sir, as you know, it contains 315 Articles, whereas the Constitution of British North America, that is Canada, contains only 147 Articles; the Commonwealth of Australia Act contains about 128 Articles; the Union of South Africa Act contains 153 Articles; the Irish Constitution contains only 63 Articles; the U.S. Constitution contains 28 Articles; the U.S.S.R. Constitution 146 Articles; the Swiss Federal Constitution 123 Articles; the German Reich Constitution contains 181 Articles; and the Japanese Constitution 103 Articles. A glance at these Constitutions shows that none of them contains more than 200 Articles whereas our Constitution contains 315 Articles.

Critics have tried to make a great deal out of this bulkiness of our Constitution. But we must not forget that ours is a big country of 330 millions and we are making a Constitution for almost one fifth of humanity. Therefore there should be no wonder that our Constitution is bulky. Not only are we making a Constitution for a number of people for whom so far no other country has made any Constitution but our problems are varied and are different. Also, at the same time we have tried to give in the constitution of ours a *modus operandi* where by we have been able to set at naught the rigours of federalism and the vagaries of unitary form of Government. In an attempt to bring about that compromise between federalism and unitary form of Government, we had naturally to take recourse to certain Articles which are responsible for increasing the bulk of our Constitution.

As I said, Sir, our is a country which has got its own problems. In no country in the world are there what we call the principalities—the States—and there should be no wonder that in order to bring all these various factors in line with the present day democratic principles, the draftsmen of our Constitution could not compress into a few Articles all that they wanted to do. Therefore the charge that has been levelled against our Constitution that it is bulky seems to me to be frivolous.

The second charge is that we have borrowed almost *vervatim* from the various constitutions and that we have not cared to glance at the Constitution of the U.S.S.R. Now, so far as this particular charge is concerned, I would like to draw the attention of the Honourable House to some very patent factual and fundamental differences that exist between our country and the U.S.S.R. Let us not forget that the Russian Constitution came into existence after full eighteen years of Government by a single party, the Communist Party of the U.S.S.R. For full eighteen years that party was in power. The October Revolution of 1917 brought that party to power and, till 1935, they did not think of making a Constitution for their country. After eighteen years, during which period a rigid single-party rule was there, they thought of giving a constitution to Russia. Our conditions are far different from the conditions prevailing in Russia. Naturally, if we could not borrow any provision from the Russian Constitution which may appear on the face of it desirable, we must not forget that we did not borrow on purpose. It is said that the Russian Constitution gives the fullest scope to the minorities, but

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we forget that during the eighteen years when that rigid party known as the Communist Party of Russia was in power in what is called the Democratic Republics of Russia, it had established such a strong hold upon the various Republics that constitute the U.S.S.R., that in spite of the fact that the Constitution gave them power to break off their connection with the Central Government, in the very nature of things it is impossible for them even to think of doing so. The Republics of Georgia, Ukraine, etc. and some of the other Central Asian republics, long before a Constitution was given to them, were in the grip of that well-knit, well-organised Communist Party of the U.S.S.R. Therefore, to turn round and say that we have not taken this or that great principle of the Russian Constitution and embodied it in our own Constitution is to ignore the facts as they exist in Russia and as they exist in our own country.

Sir, if we look at the political development that has taken shape in our own country, we will find that it is on democratic principles that our party, the Congress Political Party, has developed. The Russian Communist Party has developed on a totally different basis and that basis is the basis of revolutionary totalitarianism. Therefore those friends who came to the rostrum and spoke very well of the Russian Constitution and twitted us for not having borrowed various clauses from the Russian Constitution, may be told that their criticism is absolutely baseless. While making that criticism they have not cared to look at the situation in our own country.

Then again, let us not forget that there is a vital difference between the principles, the aims and objects of the Russian polity and the principles and the aims and objects of the polity which we want to develop in our own country.

Sir, in Russia, the individual as such has got precious little value. It is the State, the Society and the Party for which the individual should exist. But here, under the inspiring leadership of Mahatma Gandhi we have learnt to look at things in a little different way. We consider individuals to be the basis of society and party and State.This insistence upon the individual makes our situation far different from the situation that prevails in Russia. For all these reasons if our Constitution makers could not borrow from the Russian Constitution, then I can say that they did so on purpose and that it was proper that they should have looked to the democratic countries for inspiration rather than to Russia which, though apparently a democratic State, is yet a Government on a rigid single party basis.

The third charge which has been laid at the door of our Constitution makers is that this Constitution has got a very powerful centrifugal tendency and that the little provincial autonomy which seems to have been given under the Constitution is likely to be taken away in the course of working this constitution and that all power is likely to centre in the Union State. But why should we forget that we,our country, we all, have been chronic patients of what I may call centrifugalities ? This centrifugal tendency is a tendency to fly away from the Centre. This tendency of the various limbs to break off from the body politic is a historical tendency. We should not ignore it.

Today we are sitting here to weld the Nation into a strong well-knit, well organised society. If our Constitution-makers do not take care to guard against that chronic illness from which our country has been suffering for centuries, then we are likely to come to grief. Therefore I say that these friends and critics, who think that the Centre which has been given certain powers to meet certain emergencies is likely to abuse those powers, are trying to cry ‘wolf’ ‘wolf’ before actually the wolf comes to their doors.

There is no doubt that the Constitution does not contain any clause about village panchayats. A good deal of criticism has been hurled at it for that reason, but may I point out that the Constitution in no way rules out the development of the village panchayats? The Constitution does not put any obstruction whatsoever in the path of the development of those units of local self-government which will enjoy power for managing their own affairs, and therefore that criticism also seems to me to be without any foundation.

One word more, Sir, and I have done. I was rather pained to see that my esteemed friend, Mr. T. T. Krishnamachari, and my respected elder, Pandit Lakshmi Kanta Maitra, have taken our efforts, in the direction of trying to give a national language, with suspicion and even with a little sense of exasperation. I tender to my friend, Mr. T.T. Krishnamachari, a thousand apologies if that impression has been created. May I tell the House that those of us who feel that there should be a national language, that there should be a common medium by which we may be in a position ultimately to exchange our ideas and to express ourselves — this *lingua Indica* should be Hindi in our opinion — that certainly does not mean that we wish to tread upon the toes of any friends of ours. No provincial language can come to grief if those friends co-operate with us in evolving a national language. In trying to give a common language to the nation, our efforts are not with a view to exasperating any friends. We want sympathisers from every quarter. We want the whole group from the Dakshina to come to our rescue and to help us in our efforts to give a national language to this ancient land of ours. Thanks.

Pandit Thakur Dass Bhargava (East Punjab : General) : (Began in Hindustani).

Shri S. Nagappa (Madras : General): Sir, may I request that those of the members who can express themselves in English should speak in English?

Pandit Thakur Dass Bhargava : Since my friends insist that I should speak in English, I bow to their wishes. It is true that I am able to express myself with greater ease in Hindi but at the same time I do wish that I should be understood by all the members of the House.

Sir, I wish to join in the chorus of praise which has been showered in this House on the Drafting Committee, but I cannot do so without reservation. When I bear in mind the complaints made by some friends here, I do feel that the Drafting Committee has not done what we expected it to do. Some of the members were absent, some did not join, some did not fully apply their minds. In regard to the financial provisions, what do we find? They have shirked the question and have not given us any solution whatsoever with regard to some other questions also. The real soul of India is not represented by this Constitution, and the autonomy of the villages is not fully delineated here and this camera (holding out the Draft Constitution) cannot give a true picture of what many people would like India to be. The Drafting Committee had not the mind of Gandhiji, had not the mind of those who think that India's teeming millions should be reflected through this camera. All the same, Sir, I cannot withhold my need of praise for the labour, the industry and the ability with which Dr. Ambedkar has dealt with this Constitution. I congratulate him on the speech that he made without necessarily concurring with him in all the sentiments that he expressed before this House.

I think, Sir, that the soul of this Constitution is contained in the Preamble and I am glad to express my sense of gratitude to Dr. Ambedkar for having added the word 'fraternity' to the Preamble. Now, Sir, I want to apply the touch-stone of this Preamble to the entire Constitution. If Justice, Liberty, Equality and Fraternity are to be found in this Constitution, if we can get this ideal through this Constitution, I maintain that the Constitution is good. In

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so far as these four things which are contained in the Preamble are wanting, then I am bound to say that the Constitution is wanting, and from this angle I want to judge the Constitution. I know that time is very limited and I cannot touch upon everything. I wish to speak about only three or four subjects.

In the first place, I would like to draw the attention of the House to Part II-Citizenship. There are about 60 lakhs of people or more who have come from Western Pakistan, Sind, Baluchistan and East Bengal. These people are not aliens. If technically they are regarded as aliens, I do maintain that it is a sin to do so, because this situation has been brought about by the Government who agreed to partition. Therefore to make a law that each one of them should go before a District Magistrate within one month and declare that he or she is a citizen of India is rather hard. In practice, I know it will be impossible as most of these 60 lakhs of people are illiterate and do not know anything about this provision in the Constitution. If any such illiterate man fails to register himself as a citizen under this article, what would happen to him? Therefore I maintain that this is a very serious flaw in Part II. We ought to see that all these persons who have come from Pakistan on account of this Government agreeing to partition automatically become citizens of India without any effort on their part. If they want to secure themselves by making a declaration, I have no objection, but in case they fail to comply with this provision, I maintain that we should have a provision that mere permanent residence entitles them to full citizenship rights. To insist that they can only become citizens after they have gone to a District Magistrate and made a declaration that they want to be citizens of India is, in my opinion, an act of tyranny on them.

I therefore submit that this clause should be amended in such a way that those 60 lakhs of people may become citizens of India without any special effort on their part.

Secondly, I beg to submit that in regard to the question of minorities, as you know, Sir, I have been taking the very same position which you have been taking in the Minority Committee and I must say that you yourself have been a sort of beacon light to me and to others who thought like you. In regard to this question, I beg to submit that under the third clause of the Preamble equality of status and of liberty will be given to all.

In regard to the majority community — Sir, there will be either single constituencies or plural constituencies. In regard to single constituencies my submission is that if a member of a minority community will stand for those constituencies the members of the majority community will not be allowed to stand. This means that the electoral right of the member of the majority community will not be equal to the electoral right of the minority community. Again if they had plural constituencies even then I maintain, it is very humiliating for any person to stand and secure the largest number of votes and then to be told that another person of a minority community will represent that constituency and not he who secured the largest number of votes. It is extremely humiliating and I want that in regard to the electoral right there should be perfect equality among the members of the minority community and the majority community.

Sir, I have been a worker all my life for the welfare of the minority community people. For the last 35 years I have been a worker and all those who belong to minority communities know that I have never made a speech on the occasion of budget when I have not submitted to this House that in regard to posts, lands, money, property, the members of the Scheduled castes should be given preference and priority and I do maintain it is necessary to pass such measures as will level up their economic and social equality.

I am in favour of Clauses 299 and 300 which provide sufficient safeguards for them, but in regard to this aspect of reservation of seats, I must submit that I am dead opposed to it. When weightage was sought to be given to the Anglo-Indians we made an effort to see that this weightage question is not introduced into our Constitution and we succeeded ultimately and by nomination any deficiency in the number of Anglo-Indians was sought to be made up and we have got section 293 and other sections where nomination has been impressed upon to make up deficiencies, if any. Now, Sir, I maintain that in regard to Muhammadans and Sikhs and Christians no occasion for reservation arises at all and the entire population is almost homogeneous, so far as wealth,social influence and status and other things are concerned. In fact some of these communities are perhaps better off than the majority community. In regard to Harijans, members of the Scheduled castes it may be said that in wealth, social influence and social status they are inferior, but all the same I want that their position may be levelled up in ways other than by reservation of seats. In regard to this right also I am agreeable that if there is any deficiency in any number according to section 67, then we will have recourse to nomination and by nomination the number may be made up if this House thinks that their right should be secured in this respect. There is no occasion for having reservations at all but if any are necessary this method of reservation is very humiliating to the majority community and will be very harmful to the minority community. Yesterday Mr. Karimuddin gave very good reasons in the House. In the Legislative Assembly Sardar Gurmukh Singh on behalf of the Sikhs said that he did not want reservations. I know that since August 1947 the situation has changed and my Muslim friends and my Sikh friends are coming round to the view that the reservations are not useful for them. I wish that many of them expressed their minds. In regard to reservations therefore my position is that if reservations are thought to be necessary by this House, the reservation should be made only by nomination. We know how the Bureaucracy used this power of nomination, but in regard to a President who will be elected by the people. I do not think that such a misunderstanding or such a situation can arise. In regard to reservations the question of equality of status comes in the way and at the same time such a system tends to perpetuate the psychology of separation and the majority community is bound to consider that the reservation being there they are not bound to do anything further and the word fraternity which has been added in the last sentence by Dr. Ambedkar will lose its significance. If we want to abolish the sense of separation, it is necessary that we should not encourage the sense of separation by our own act. I therefore submit, Sir, that in regard to reservation I wish the House accepted the proposition which I am advocating from the very day in which I entered this House.

Some criticism has been made in this House that this Constitution is more political than social and economic in nature. Prof. K. T. Shah gave vent to his feeling yesterday and I for one respect every word of what he said, but may I humbly submit that in this Constitution we have got sections 32, 33, 38 which deal with the social and economic aspect? Now, Sir, I do not want that we should have a Constitution which we may not be able to work; if this Constitution said that the State shall provide full employment and amenities and these rights given in the directive principles were also justiciable, we shall be stultifying ourselves and promising to do what we are unable to do at present as I do not think that the present Government of India is able to do what the other States in Europe can do. This Constitution very modestly says that we shall endeavour to the best of our ability to do what we claim to do.These directive principles have been spoken of disparagingly by some of the Members. I beg to submit that I regard these directive principles to be essence of this Constitution. They give us a target, they place before us our aim and we shall do all that we can to have this aim satisfied. In regard to this, sections 32, 33

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and some other sections provide social and economic basis for advancement. In regard to section 38 it says that the standard of living shall be raised. But the question arises. How shall the standard of living be raised?

In India a poor country, where the average earning of a man is only five shillings a week, compared to other countries of the world where the earnings are at least twenty times as much, we do not know how to face this question. If we go to the villages, even drinking water is not easily available. In regard to clothing, you know better than I can describe. In regard to these matters, if we want really to place some sort of an obligation on the Government, let us say clearly that the Government shall have, as soon as it gets into full power, to undertake the execution of irrigation and hydro-electric projects by harnessing the rivers, by the construction of dams, and adopt other means of increasing the production of food and fodder. Similarly, we can say certainly that the Government should provide good drinking water in the country. If you want rivers of milk and honey to flow in India, we should also say that the Government shall preserve, protect and improve the useful breeds of cattle, and ban the slaughter of useful cattle, particularly milch cows and young calves. I am placing this humble submission before the House. I know that the Congress party unanimously accepted this proposition when it was put to the House by me at the time of their meeting. But, it was my misfortune that this thing could not be debated in this House; and when the occasion came, the House was adjourned. I submit that there is a very great demand in this country that some steps should be taken to see that people get good food, good drinking water and milk. I have used the words "useful breeds of cattle and useful cattle". I may say every Government in India, even the Muslim Kings, the Government of Afghanistan, and even now Burma, have settled this thing by law for all time. In Burma, today, which has got no religion like ours, who donot regard the cow as sacred, they have enacted that slaughter of cows shall be banned. I do not want that. What I want is that the slaughter of useful cattle shall be banned. That is my humble submission to this House and I think nobody will disagree. This would, at the same time, give satisfaction to crores of people who regard this question from a different motive, though I do not regard it from that motive.

I have to make one other submission to the House and it is this. We have heard too much about the village panchayats. How these village panchayats will work I do not know. We have got a conception and that conception we try to put into practice. I wish to submit to this House for their very serious consideration that when the constituencies come to be formed under the new Constitution, they should make territorial constituencies; they should not make constituencies of cities alone and they should not make constituencies of villages alone. They should evolve a system by which the differentiation between the rural and urban people, between those who have too much and who have too little may for all time be removed, so that we may evolve one nation. In my visit to England just now, I found when an application goes to the Government for starting a new factory, they say, "go to the villages, we shall not allow any more factories in London". I want all the factories should be so established in India that for the villages or for groups of villages some sort of employment may be provided. The industries should be decentralised as much as the administration should be decentralised. The disparity between the mode of living of the rural people and the urban people must be abolished if we want to evolve one nation. At the present time, what do we find? The urban people and the rural people are so much a part from each other in their modes of living and outlook on life. To go near the villages is very difficult. The urban people do not like to go to the villages. I know the Congress has gone to the villages

all honour to the Congress. But, there are a good many in the Congress also who do not wish to go to the villages; they cannot go because their mode of living is different. You will have to evolve such constituencies in which the cities and villages come in without any distinction; if there is a constituency for a lakhs of the population, the cities and villages should be included in one constituency. Some of the village people themselves may not like the urban people coming in, and will regard this proposition as a contrivance for usurpation of their preserve but in making this proposal I have the best interests of the country as a whole before myself. I wish that the amenities of life may be the same everywhere in city as well as in village and infuture all efforts be concentrated financially and politically to bring the village into line with the city. I hope if you will ponder over this question, you will agree that it is essential to work this constitution in such a manner and in such a spirit as will conduce to better life and better happiness of the nationals of this country.

Shri H. V. Kamath (C. P. and Berar : General): On a point of order, Sir, may I ask whether it is fair to this House that Dr. Ambedkar who has moved this motion and who is expected to reply, to the debate should remain absent from the House? Is anybody deputising for him here ?

Mr. Vice-President : Yes.

Shri Algu Rai Shastri (United Provinces : General): *[Mr. President, Sir, the point raised by Shri Kamath just now appears to be quite sound because so long as the member in charge does not benefit from the speeches that are being delivered and does not pay attention to whatever is being said in the House, it is futile to have a discussion. Therefore, I request that so long as he is unable to be present here, the discussion should be postponed. However, if he has authorised some one else to note down whatever is said here and then to help him, there would be no harm done. Otherwise the whole discussion that is being held appears to be a mere waste of breath and will not be of any use in amending the Constitution.

You should, therefore, give a clear ruling that if there is to be a discussion, the member in charge, who is piloting the Draft, should be present here or some representative of his should be here. So long as this is not arranged, the discussion should be postponed.]

Shri Satyanarayan Sinha (Bihar : General): Mr. Saadulla who was in the Drafting Committee is here and he represents Dr. Ambedkar.

Mr. Vice-President : There are members of the Drafting Committee here who are deputising for the Honourable Dr. Ambedkar. I think that our requirements are fairly met. I hope this will satisfy the House.

Shri Lala Raj Kanwar (Orissa States): Sir, as a back-bencher and as one who has generally been a silent Member of this House, I crave your indulgence and the indulgence of this august Assembly to make a few observations for what they are worth. My observations, if I may say so, will be confined to only one aspect, albeit a very important aspect, of the problem that we are called upon to tackle, namely the question of national language.

Mr. Vice-President : It is for you to consider whether a detailed examination of that is necessary now.

Shri Lala Raj Kanwar : I am not going into the details; I shall confine myself to general observations. The Constitution is bound to reflect the will of the people and the voice of the people and I believe, therefore, the voice of God, as the Latin saying goes, *vox populi, vox Dei*. It means that it is not a question of the language of the Constitution, but the language of the nation and the country at large. Sir, in the Upanishads, which are the repository of concentrated

* [ ] Translation of Hindustani speech.

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wisdom and divine knowledge, and about which the great German Philosopher Schopenhauer said that "in the whole world there is no study so elevating as that of the Upanishads, which has been the solace of my life and which will be the solace of my death", it is written:

यन्मनसा ध्यायति तद्वाचा वदति यद्वाचा वदति तद कर्मणा करोति
यत् कर्मणा करोति तदामि संपद्यते॥

As one thinks from the mind, so he speaks from the mouth;
as one speaks from the mouth, so he acts;
as one acts, so he becomes. That is, the deeds proclaim the man.

Language is the outward expression of our inner most thoughts and a common national language is a prime necessity as it makes for unity and cohesion in a manner in which no other single factor does. As in the case of redistribution of provincial boundaries, there is an outcry in favour of some of the provincial languages struggling for supremacy. This is only natural but there should be no antagonism between one language and another. Whether the provinces should be formed on linguistic basis or some other basis or should be left intact has nothing to do with the question of national language—the *lingua franca* of the country. That the Government of the day can give a great lead in this matter goes without saying. Witness the case of English which under the domination of our late foreign masters practically became the *lingua franca* throughout the length and breadth of this vast country. But in order to be the national language it should not only be the language of the intelligentsia but of the common people. It should be a language which should be spoken and understood by all classes of people and by the majority of them. Considering the huge population of India we find that of the provincial languages such as Bengali, Marathi, Gujarati, Punjabi, Telugu or Oriya, none of them is spoken or understood by the great majority of the people of India and the only language that can lay claim to a great extent to this position is Hindi which is spoken not only in Upper India but in C. P., Rajputana, Bihar and various other tracts. But the spoken Hindi is not the Sanskritised Hindi of Scholars and the intelligentsia—for after all what is their percentage as compared to the huge population of the country—but a Hindi full of short, sweet and simple words, the pure, chaste and unadulterated Hindi spoken by the great majority of the people and which the uneducated people, the women folk and the children make full use of and speak freely and frankly. Although Sanskrit is the mother of most of the Indian languages—the languages not only of India but also of the World—and although it is the language *par excellence* in which our Vedas, Upanishads, Shastras, the Ramayan and Mahabharat and the Immortal Gita are written and although in the words of Sir William Jones, the great Orientalist, "Sanskrit is more perfect than Greek, more copious than Latin and sweeter than Italian", still it is not the language of the common people and so it is not desirable that we should draw upon it for our daily requirements in Hindi. Moreover Sanskrit has been a dead language for several centuries like Latin, Greek and Hebrew, and in spite of the marvels of the marvellous and inimitable Ashtadhyayi of Panini, the greatest Grammarian of the world, Sanskrit is most difficult to learn. The test of a national language should be its simplicity, and that it should be easily understood by everybody in the country. Now nobody can deny that the Sanskrit Alphabet is the most perfect and scientific in the World and it is also very natural and not unlike the alphabets of other languages. For example the very first letter of its alphabet is अ. The mouth automatically opens when you have to utter this and the sound represented by it is the very first sound which one hears when the mouth is opened. Similarly when the last

letter of the Sanskrit alphabet, that is म is uttered the mouth is automatically shut, which means that it is rightly the last letter of the alphabet, although I do not forget that म in a sense is not the last letter of the Devanagri alphabet because it is followed by other letters like य र ल व but they are variations of other letters. For instance य is a variation of इ, र is a variation of ऋ, ल is a variation of ऌ, व is a variation of उ. On account of the perfection of the Sanskrit alphabet, Hindi which is spoken by the great majority of the people in this country, should when reduced in writing, be written in Devanagri script *(Cheers)*. Sometime ago a move was made to evolve what is known as basic English. If some such steps could be taken with regard to Hindi, it would be much easier for other people who do not at present speak Hindi or write Hindi to learn it in the minimum of time. In view of the position hitherto and at present occupied by Urdu written in the Persian script and in view of the fact that it is the language generally used by our Muslim brethren who number early $3^1/_2$ or 4 crores in this country and who are scattered throughout the length and breadth of this country, and in view of its intrinsic merit that its script is a sort of shorthand, I think it is desirable that we should pay some attention to Urdu also but of course it can never be and there is no reason why, it should be the primary language of the Nation. The national and official language should of course be Hindi written in the Devanagri script but the second language should in my opinion be Urdu because it is a sort of shorthand and takes much lesser time to write and occupies much lesser space than other languages. For example take the word 'Muntazim' which in Urdu is written as if it were one compound letter, but if you write in Hindi in Devanagri script or Roman English it will consist of 7 or 8 distinct letters. Similar instances are 'Muntazir, Muntashir, Muntakhib' and hundreds of other similar combinations of letters which at present form unitary words. So I think that in view of the fact that Urdu is at present spoken by an appreciable number of people in this country and especially in big cities like Delhi, Agra, Lucknow and other places, and the country side round about Delhi, and other large centres of population in Northern India and it possesses certain advantages in as much as it is a sort of shorthand, I submit that we should treat it as the second language of the country. Moreover, if we adopt it as a second language, it will be a gesture of good-will towards the Muslim population who, as I have already said, number no less than $3^1/_2$ to 4 crores. And in a secular State we will do well to make such a gesture. However much we may feel the consequences of the partition and the holocaust that followed in its wake we should take a realistic view of things, for after all we cannot build on anger, vengeance or retribution. Although I happen to represent a distant part of India at the moment, namely the Orissa States, I am a Punjabi, and like most Punjabis have suffered grievously in a variety of ways on account of the partition, but that should not make me forgetful of our duty towards the country. We should also not forget that the Father of the Nation during his life-time freely and unreservedly expressed himself in favour of Hindustani, and in expressing this opinion he was never depressed; on the other hand he was always impressed with the reality of the situation and the necessity and the correctness of this view.

One other suggestion that I should like to make in all humility is that in framing our Constitution we should invoke God's blessings as is done by every householder when he performs some big ceremony or when some great *Yajna* has to be performed. And what greater *Yajna* could there be than this in the new India that is born after so much travail? I therefore suggest that at the commencement of the Constitution we should say that we invoke God's blessings in this holy task, and at the end of the Preamble also we should use some such words as "So help us God". At a time of great trial facing his

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country Rudyard Kipling devoutly wrote:

Lord God of gods,
Be with us yet,
Lest we forget, Lest we forget.

I trust this suggestion of mine will be considered by this Honourable House.

Before I resume my seat I should like to add my tribute to the chorus of praise showered on the Honourable the Law Minister, Dr. Ambedkar, Chairman of the Drafting Committee, for the excellent speech made by him while moving for the consideration of the Draft Constitution. For lucidity and clarity of exposition and expression it could hardly be surpassed. Both he and his co-adjutors are entitled to our best gratitude for the very strenuous work they have done inpreparing the Draft Constitution. Sir, I thank you for giving me this opportunity of making my submission.

Shri Yudhisthir Mishra (Orissa States): Mr. Vice-President, Sir, I have been called upon to speak at this fag-end of the morning session and I shall try to finish it as soon as possible. I want to submit a few points for the consideration of this Assembly. The first thing is that in the whole of the Draft Constitution there is no provision for the economic independence of the country. So long we had been fighting for the political independence of the country, and times without number, our leaders have said that we shall try to establish in this country such a Constitution as will provide for the economic independence of the country. But I am sorry to say that nothing of the kind has been done. There is nothing for the common people to be secure about their future. There is nothing in this Draft Constitution which provides them full opportunities for their growth in the future. The Constitution should firstly provide that all the lands, machinery and all other means of production and products thereof will be owned and controlled by the State in the interests of the people.

Secondly, the State should provide for every man and woman work according to his or her capacity and ability and supply the people with materials and goods according to their needs and requirements.

Thirdly, the production of goods should be determined and regulated according to the needs of the people. The Draft Constitution does not give any guarantee for the nationalisation of the wealth within a reasonable time; and it does not say anywhere that every man and woman should be provided with work in this country.

The second submission I would like to make is about civil liberty. The Draft Constitution provides that a person can be detained without trial in the interests of the state. I do not understand what is meant by "in the interests of the state". You have been seen, in the last few months, from January and thereafter, what is meant by detention without trial. In the various High Courts it has been held that the detention which has been ordered by the various Provincial Governments was in some cases illegal. When there is the law of the land to be applied to different individuals, I do not understand why there should be any provision at all for detention without trial. We fought against this during the time of the British Government, and I do not see any reason why this provision should be retained now also. Of course this principle has been agreed to by this Assembly while adopting the principles of the Constitution. But I would submit that this view should be changed and that the provision which has been given a place in the Draft Constitution should be amended.

The third submission I would like to make is about States, the Rulers of which have ceded their jurisdiction and power to the Central Government. The provision which has been made in the Draft Constitution is beyond the terms of reference given to the Drafting Committee. I do not understand why the Drafting Committee has gone beyond the terms of reference and has gone beyond the

wishes of the people of the States who have come under the administration of the Government of India and adopted a Constitution which is not at all demanded or liked by the people of the States. I would therefore say that Article 212 which has also been applied with respect to the States who have merged with the Provinces should be amended and that the wishes of the people should be respected in that regard. Of course, in due time the amendments will be moved, and I hope the House will accept the same.

With these words, Sir, I command the Draft Constitution for the consideration of the House.

Mr. Vice-President : I am glad to announce to the Honourable Members that the President has agreed that in deference to the wishes of the House, we shall have another day, that is Monday, for general discussion.

The Assembly then adjourned for lunch, till Three of the Clock.

The Assembly re-assembled after lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri H. V. Kamath : Will you be so good as to direct that.....

Mr. Vice-President (Dr. H. C. Mookherjee): Will the Honourable Member kindly resume his seat?

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following member took the Pledge and signed the Register:

Shri Ratna Lal Malaviya (C. P. and Berar States).

MOTION *re* DRAFT CONSTITUTION—*Contd.*

Mr. Vice-President : We will now resume the debate.

Shri H. V. Kamath : Will you be so good as to direct that a copy of Dr. Ambedkar's speech introducing the Draft Constitution be supplied to every Honourable Member with the least possible delay?

Mr. Vice-President : I understand that the speech of the Honourable Dr. Ambedkar will have to be cyclostyled. This will be done as quickly as possible and possibly copies will be made available to the Members either this evening or tomorrow morning.

We will now resume the debate.

Prof. Shibban Lal Saksena (United Provinces : General): Mr. Vice-President.....

Shri B. Das (Orissa : General): Are you allowed to speak twice on this motion?

Prof. Shibban Lal Saksena : No. Formerly I spoke on the amendment of Seth Damodar Swarup. I have not yet spoken on the motion moved by Dr. Ambedkar.

Mr. Vice-President, we are today called upon to discuss the principles underlying our Draft Constitution. To begin with, I must congratulate the learned Doctor who has placed this motion before us. I have read the speech, which he delivered, several times and I think it is a masterpiece of lucid exposition of our Constitution. I certainly think that there could not have been an abler advocacy for the Draft Constitution. But I would like to say something about the principles incorporated in the Constitution.

Sir, this Draft Constitution has accepted, as he himself said, the democratic Government of England as the model and has rejected the American system of Government. I personally have tried to compare both and to weigh which is better. I personally think that our country's need at present is for a stable State. I think what we require first is stability of Government. I therefore think that we should have opted for the system which prevails in America. A President elected by adult suffrage should be in charge of the Nation and he should have the right to choose his executive to carry on the administration, and the judiciary should be independent of the executive. I personally think that stability of Government is the first need of the Nation today. There are already tendencies which are fissiparous. There is the demand for linguistic provinces and for re-distribution of the provinces. We have also seen quarrels about the division of powers between the units and the Centre. All these tendencies are natural. But if we had modelled our Constitution on the American example and had adopted their system of election, I think it would have met our needs better. Therefore, in one fundamental respect I beg to

differ from Dr. Ambedkar who has opted for the British model. The British system works admirably. But that is the result of seven hundred years' experience and training. Besides, I think there are two special features of British life which enable them to keep their system going. There are no fissiparous tendencies and the loyalty to one King is a strong binding force. Secondly, in every English man, respect for his Constitution is in grained. In our own country, I personally feel that the American system would be better. There will be less corruption and we can grow to our full stature much better under that system than we can do under the system recommended.

Then, Sir, Dr. Ambedkar has criticised the system of village panchayats which prevailed in India and which was envisaged by our elders to be an ideal basis for our Constitution. I was just now reading Mahatma Gandhi's speech in the 1931 Round Table Conference in London. He was speaking about the method of election to the Federal Legislature. There he recommended that the villages should be the electoral units. He in fact gave fundamental importance to the village republics. He said that it was in villages that the real soul of India lived. I was really sorry that Dr. Ambedkar should express such views about the village panchayats. I am certain that his views are not the views of any other Members of this House. Let us see what Dr. Ambedkar has said about these village panchayats:

> "Their part in the destiny of the country has been well described by Metcalfe himself who says:
>
> 'Dynasty after dynasty tumbles down. Revolution succeeds to revolution. Hindoo, Pathan, Mogul, Maharashtra, Sikh, English, are all masters in turn but the village communities remain the same. In times of trouble they arm and fortify themselves. Any hostile army passes through the country. The village communities collect their cattle with in their walls, and let the enemy pass unprovoked.'
>
> Such is the part the village communities have played in the history of their country. Knowing this, what pride can one feel in them? That they have survived through all vicissitudes may be a fact. But mere survival has no value. The question is on what plane they have survived. Surely on a low selfish level. I hold that these village republics have been the ruination of India. I am therefore surprised that those who condemn provincialism and communalism should come forward as champions of the village. What is the village but a sink of localism and a den of ignorance, narrow-mindedness and communalism. I am glad that the Draft Constitution has discarded the village and adopted the individual as its unit."

I am certain that a very large majority of the House do not agree with this view of village republics. As one who has done work in villages and has experience of the working of Congress village panchayats for the last twenty-five years, I can say that this picture is purely imaginary. It is an entirely wrong picture. I personally feel that, if we bring to these village panchayats all the light and all the knowledge which the country and the world have gathered, they will become the most potent forces for holding the country together and for its progress towards the ideal of Ram Rajya. In fact, the Soviet Constitution is based on village units, village Soviets as they are called. I feel personally that these village republics, like the Russian village Soviets, can become models of good self-government. I think that the Constitution should provide for the establishment of village republics.

The Upper House under this Draft Constitution is to be elected indirectly by provincial legislatures. I think it should be elected on a wider franchise and village panchayats should be required to elect the Upper House. The suggested method of electing the Upper House by provincial legislatures is a very wrong method. If village panchayats are allowed to elect the Upper House, we will have a more representative Upper House. I personally feel that unless we give the villages more responsibility, we cannot really solve their problems.

[Professor Shibban Lal Saksena]

The third point I want to touch upon is States. I fully agree with Dr. Ambedkar in his criticism against having two kinds of constitutions, one for Indian States and one for provinces. I feel that the States should be made to fall in line with the provinces. I hope that the States' representatives here will see that it will be more advantageous to have constitutions for the States similar to those for the provinces. Instead of Governors, they can have Rajas as constitutional heads. Most of the smaller States have already merged themselves with bigger units. Where they are very small, they have already merged themselves with provinces. I feel that the Constitution should have a provision that, if any State wishes to fall in line with the provinces, the provincial constitution shall apply to that State also. I hope that by the time the Constitution is passed, most of the States will agree to fall in line with the provinces.

Then, Sir, about the fundamental rights, Dr. Ambedkar said that nowhere in the world are Fundamental Rights absolute. I personally feel that our Fundamental Rights should be in more unambiguous form. I think there is much force in the contention that the provisos to these Fundamental Rights take away much of the rights granted by the Constitution. I think that these Articles should be modified.

Then, Sir, one word about our national language. I think there should be a separate clause stipulating a national language on the model of the Irish Constitution. I personally feel that it should be Hindi written in Devanagri characters. Similarly I think the form of the flag should also be provided for in our Constitution: what colour it shall be and what its dimensions should be, should all be declared in the Constitution. I also quite agree with Seth Govind Das when he said that cow-slaughter should be banned in the Indian Union. I personally feel that the sentiment of thirty crores of population should be respected. I feel that we should provide in one of the Articles of this Constitution the banning of cow-slaughter. I feel that after all we have to take the people as they are and we will have to respect their sentiments also. I therefore feel that this Constitution should be amended to suit our needs and requirements.

Lastly, Sir, I thank the Drafting Committee for providing us with a very fine Constitution. I also feel that the suggestions that I have made will be discussed at the amendment stage and finally find a place in the Constitution of our country. Sir, with these words, I commend the motion to the House.

Shri Sarangdhar Das (Orissa States): Mr. Vice-President, Sir, like all the previous Speakers I congratulate the Drafting Committee, and especially its Chairman, Dr. Ambedkar for the hard work that they have put in. But at the same time, there are certain things in his speech with which I cannot agree. When he says: "What is the village but a sink of localism and a den of ignorance, narrow—mindedness and communalism ?" I am rather suprised that a respected member of this House and also a Minister of the National Government should have such an idea about our villages. I must say here, that with the spread of western education in our schools and colleges we had lost contact with the villages, and it was our leader, Mahatma Gandhi, who advised the intelligentsia to go back to the villages, and that was some thirty years ago. For the last thirty years we have been going into the villages and making ourselves one with the villagers; and in reply to Dr. Ambedkar's accusation, I would say that there is no localism in the villages. There is ignorance,—yes, ignorance of the English language and also our various written languages, and that situation is due to the kind of Government we had, a Government that destroyed our educational system. As far as knowledge of nature and wisdom gathered from Shastras and Puranas are concerned. I would say that there is more wisdom and more knowledge in the villages than in our modern cities.

I am not a hater of cities. I have lived in cities in two continents, but unfortunately our cities in India are entirely different from the cities in other countries. Our people living in the cities are far away from the villagers, from their life, and that is why we have become such that we think there is nothing good in the villages. Now this idea is changing; I do not know if it is changing outside the Congress circles, but I am positive that within the Congress circles, the idea of the villages is uppermost in everybody's mind. I shall therefore appeal to Dr. Ambedkar to reconsider this matter and to give the villagers their due because the villages in the near future will come into their own as they used to be.

Now then when we come to the Draft Constitution itself, I am at one with Dr. Ambedkar in the matter of more power to the Centre, because a strong Centre is very necessary at the present time. No matter what we say about the fundamentals of the culture of our peoples in different provinces being the same, we are a heterogeneous people; and taking advantage of the situation that the British have gone, there are all kinds of disruptive elements trying to raise their heads, and therefore it is essential that the Centre must be strong so that all the different peoples of the country can be welded together into one nation. In this connection, I would urge upon you to keep this idea of linguistic provinces in abeyance for, say, five or ten years, because although I come from a province where we also think that injustice has been done to our province, nevertheless because of this linguistic provinces idea during the last one year, there has been more bitterness between the peoples of neighbouring provinces than anything good. And this is not the time to have bitterness. We want goodwill between the neighbouring provinces and that is why I would strongly urge that this linguistic provinces idea should be kept in abeyance for at least five years. As regards language, I know and every freedom loving man in any country knows that there must be a national language. In that respect also, we have different provincial languages some of which have developed very much and are of a very high order, while there are other which are backward. So, there is a competition between the different provincial languages. But, we must remember that we must use a language that the majority of people speak or understand. There is no language other than Hindi that can stand this test. Hindi is a language based on Sanskrit. Because in the different provinces we study Sanskrit to some extent, although not as fully as the older generations used to do, our regional languages also are based on Sanskrit, our Sadhu Bhasha as we call it in my province, that is, the scholarly language is such, that I believe, this scholarly language spoken in Orissa can be understood by the Hindi people or the people from the Punjab and they do understand it. So also, the Oriyas understand Hindi though they may not be able to speak it. The same is the case in Bengal, Maharashtra, etc. When we look at it from that point of view, I am rather surprised that other non-Hindi-speaking friends, particularly in South India consider that the demand for adopting Hindi as our national language is "imperialism of language". I do not see where there is imperialism of language. If the South Indians can speak in no other language than English, do they mean to say that the millions of people living in the Madras Province understand English? It is only a few, and a few of the uneducated people in the cities also who understand English; but not in the villages. We will have to banish English; but at the same time, I would say to the advocates of Hindi that it cannot be done right away, immediately. Some time must be given to the people of South India and other non-Hindi speaking provinces to get acquainted with Hindi and to make their contacts with North India and Western India in the national language.

The next point I want to dwell on is the Indian States.When we first considered the principles of the Constitution, some ten months ago, the

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Indian States were in a different position. Since then, things have changed. I cannot see how we shall have units of Indian States and of provinces, and call them all units, and yet, the Indian States are not on a par with the provinces. Particularly I see, that the High Courts of the Indian States will not be under the jurisdiction of the Supreme Court. It is said in the Chapter on Fundamental Rights that these rights are guaranteed to every citizen in India. I take it that a person, man or woman, living in an Indian State or in a Union of States as they have been formed during the last few months, is a citizen of India and if his Fundamental Rights are curtailed by the Government there, there is an appeal to the High Court and that is the final judgment, while in the provinces, the matter can go up to the Supreme Court. I do not see how the man or woman in the States is on a par with the man or woman in the provinces.

Then there are various other matters that exist in many States, particularly in Rajputana and Central India, where there are Jagirdars who own practically 75 to 90 per cent. of the land under the Maharajas of Jaipur, Jodhpur and Bikaner; there is an inland customs duty collected by the Jagirdar from the producer, and then again by the Maharajas' Government, and then when the goods are exported to the neighbouring State, that State also levies an import duty. I can give a particular instance of cotton grown in Jaipur, paying two duties in the Jagirdar's territory and while going out of Jaipur, paying another import duty in Bikaner,when exported to Bikaner, where there is no cotton grown.These matters will have to be changed and the earlier they are changed, the better it is for the primary producer as well as the consumer and also for the expansion of trade and commerce.

Then there is another matter and this is the last one that I want to stress, that is the tribal population in the various States that have come into the provinces, particularly in Orissa and the Central Provinces. It is the duty of the Union Government to improve their standard of living, and to give social and economic amenities to all the people. These tribal people, unfortunately, have been in a very backward condition as far as education, sanitation and economic status are concerned. There are about twenty lakhs of tribal people in Orissa and about 15 lakhs in the Central Provinces. For the quick advancement of these fellow citizens of ours, it will be necessary to allot large sums of money from the Centre, because the provinces cannot bear such heavy burdens. In the matter of financial arrangements between the Centre and the provinces, it will be necessary, when there is any per capita allotment on population basis, for the purposes of the tribal people, the amount must be four or five times the ordinary allotment allowed for the non-tribal people. I press this point particularly, because, if we are to improve their status in the quickest possible time, it is necessary to spend more money whenever it is needed and wherever the people are backward.

Chaudhari Ranbir Singh (East Punjab : General): *[Mr.Vice-President, while supporting the motion of Dr. Ambedkar I would like to submit a few words to this House. I agree with Seth Govind Das that it would have been better if we had decided upon our National Anthem, National Flag and National Language in the very beginning. With reference to what Shri Maitraji said yesterday, I admit that we cannot expect our Deccan friends to speak in Hindi and to use it for the business of the House all at once. But there would have been one advantage if the problem of the national language had been settled in the very beginning—and even now the advantage would accrue—and it would

* [ ] Translation of Hindustani speech.

have been that people would have come to know which language was to be their national language and which language they should seek to learn.

I would not like to go deep into the question of centralisation and decentralisation of power, but I would like to draw the attention of the House to one matter. Mahatma Gandhi, the Father of the Nation always taught us that whether in the political or in the economic sphere decentralisation engenders a power which is much greater than other kinds of power. Besides, there are other reasons also for this view. I am a villager, born and bred in a farmer's house. Naturally I have imbibed its culture. I love it. All the problems connected with it fill my mind. I think that in building the country the villagers should get their due share and villagers should have their influence in every sphere. Besides there is another matter to which attention was drawn this morning by Babu Thakur Dasji. It is that the distinction between rural and urban seats should be done away with. I have no doubt that if we take a long view of the matter it would be beneficial for the rural areas—and more specially in a country like India where there are seven lakhs of villages and only a few cities. But we cannot ignore the conditions of today. Howsoever ingeniously we may try to beguile them with subtle arguments and fine sentiments the village people cannot be blinded to the fact that the power of the Press and the Intelligentsia is centred in the cities alone, and that they of the villages have little say in the affairs of the nation. It is no use, therefore, to ignore this reality. Today a distinction has to be maintained in our country between the rural and urban seats. In fact reservation of seats is to be provided and it should be provided, for those who are backward. The reservation provided in our Constitution is rather a peculiar one. We should remember what used to be emphasised by the Father of our Nation, Mahatma Gandhi, that is, the means for achieving an end have to be very carefully scrutinised, for the end is conditioned by the means. Our aim today is to set up a secular State—a non-denominational State. I cannot therefore, see any reason why seats should be reserved for minorities or sectarian groups. I do not see any sound reason for the adoption of such a course of action. Would not its adoption defeat the realisation of Ideals we have in view? Our object of establishing a secular State in this country would remain merely an unrealised dream if we decide to provide safeguards on grounds of religion. The training, the level of education, and the power of the followers of Islam do not need any further demonstration in the circumstances prevailing in the country to-day for we have already had ample proof of the same.

We have seen that by the power of their organisation and with the help of a foreign power they brought about the partition of the country. The other minorities that have already been referred to are not less powerful. We cannot from any point of view call them backward communities. It is no doubt true that it may be said, if it can be said for any group at all, that Harijans constitute a backward class. Both from their educational and financial conditions they may be called a backward class. But even in this respect we have to keep in view one other consideration. It is that if we provide in this Constitution safeguards for Harijans, the word 'Harijans' would be perpetuated even though such is not our intention. We want to form a classless society in the country. But a classless society cannot be formed if we make a provision for reservation of seats on the contrary. This would only perpetuate the word 'Harijan'. In my opinion there is another way and a much better way of providing safeguards for them. All the backward people in the country are either peasants or labourers. All such people were disfranchised in Russia as did no manual work and lived not by their labour, but on the returns on their capital. We may not disfranchise such people in our country today. We may even give them rights according to their numbers. But we should provide safeguard for manual workers, the peasants and the wage-earners. If safeguards are to be provided they must be only for

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those who are peasants and wage-earners and in fact safeguards can be properly provided for them alone.

There is one thing more. As I said before, it may perhaps be objected that this will give rise to another serious problem, that is to say, the words 'peasant' and 'labourer' will find a permanent place in the Constitution. But I think that, even if this happens, it will not be in any way injurious to anyone. It will be all the better that the people of the whole country would be labelled as peasants and workers. If every one would earn his bread by labour, it would be the best thing for the country and the problems of food and cloth with which the country is faced today would then be solved easily.

I would like to proceed to make one more observation and this I may do only as a peasant. It is with respect to the protection of the cows. Pandit Thakurdass Bhargava and I had jointly moved a resolution on slaughter of cows in the Congress party and at that time it was unanimously adopted. But unfortunately no mention of it has been made in our Constitution. Though the same was the case in regard to Hindi on which question also the party had come to a decision, yet the mention of Hindi is to be found in the Draft while no mention has been made of the resolution as regards cow protection. I humbly submit that that resolution should be carried out as a whole—rather it should be enlarged as follows:

"In discharge of the primary duty of the State to provide adequate food, water and clothing to the nationals and improve their standard of living the State shall endeavour:—

(a) as soon as possible to undertake the execution of irrigation and hydro-electric projects by harnessing rivers and construction of dams and adopt means of increasing production of food and fodder.

(b) to preserve, project and improve the useful breeds of cattle and ban the slaughter of useful cattle, specially milch and draught cattle and the young stocks."

Sir, I would like to make one more point in regard to the economic order. I have no objection, rather I am happy that the Centre should be very strong. But I consider it my duty to submit that the finances of the provinces should be on a sound basis. Today there is not a single pie of the income of the peasant who earns it by his sweat and blood, which is not taxed. If he cultivates even a single bigha of land he has to pay a tax on it. As compared to this even an income of two thousand rupees of other people of India is not taxed. This is a great injustice to the peasant, particularly in a country where they dominate and have a large population. It should rather be considered how the continuance of this injustice in a country of peasants would look like? Therefore I want that the provincial governments should realise land revenue on the same basis as the income tax; for this purpose their finances should be strengthened.

I would like to make one more observation as a Punjabi. Punjab was partitioned as a consequence of the Freedom of India and partition completely dislocated the entire administration of this Province. To bring it again into line with the other provinces it is necessary that at least for the next ten years, in so far as its finances are concerned, special concession should be shown to East Punjab.]

Mr. Vice-President : I have received a number of communications from Honourable Members suggesting that the House might be adjourned as they want to go to the Exhibition. I want to know the views of the House.

Honourable Members: Yes, it may be done.

Mr. Vice-President : I have got the names of sixty gentlemen who wish to speak. The adjournment will mean that only a smaller number will be able to speak because there is only one day left. It is for the House to decide what they want.

An Honourable Member : We might adjourn at half past four.

Another Honourable Member : Let it be four o'clock.

Mr. Vice-President : We will carry on up to a quarter past four.

Shri R. R. Diwakar (Bombay : General): Mr. Vice-President, Sir, Honourable Members who have spoken before me have covered enough ground and I think I should not take much time of the House in going over the same ground. I would like to make a few points which from my point of view are very important when we are on the eve of giving a new Constitution to our country. One thing which I wish to make quite clear is that the Draft Constitution which is before us is really a monumental work and we all of us have already given congratulations to the Drafting Committee and its Chairman who is piloting it through this House. At the same time I would like to point out that the Drafting Committee has not only drafted the decisions of the Constituent Assembly but in my humble opinion it has gone far beyond mere drafting. I may say that it has reviewed the decisions, it has revised some of the decisions and possibly recast a number of them. It might be that it was inevitable to do so under the circumstances, but at the same time we, the Members of the Constituent Assembly, should be aware of this fact when we are considering the Draft and when we are thinking in terms of giving our amendments.

The second point I want to make is about the hurry with which some people want to finish the discussions about this Draft. I do not think that much hurry will be beneficial in going through the Draft. Enough time should be allowed, and none of the amendments that may be given should in any way be suppressed or insufficient time given to them. Enough time should be given for the discussion of important things. If not for anything else, I want to point out that it is more than one year since Free India is in existence, and this year has been one of rich experience. This experience itself, I think, should make us pause and think about changing a number of provisions that are there in the Draft, as it is today before us.

Let us take the question of adult franchise. A number of us are already thinking as to whether we shall have the required type of people in the legislatures if we straight away introduce adult franchise. I am one of those who would suggest that while we should keep adult franchise as it is, so far as the electorate is concerned, we should consider and put our heads together and see if the qualifications of candidates are, in a way, such as would bring to the legislatures people who would really be capable of shouldering their responsibilities. No doubt it is a superstition with western democratic method that each one who has a vote is also eligible for becoming a candidate. But I do not think that it is absolutely necessary for the purposes of democracy to follow this tradition of western countries. We can as well think about the important consideration that we want a legislator who is not merely a representative but also a representative who can legislate and who has a certain perspective. While we are speaking in terms of nationalism, unitary government, strong Centre etc., all these words would be useless and meaningless if we do not have in our legislatures people who have this perspective and who can look upon every piece of legislation with this perspective and in this context. The Constitution, after all, draws its force from the people who work it and if we are not able to send to the legislatures people who can understand, who can grasp the spirit of the whole Constitution, I think it would be very difficult to work it for what it is worth. I want to point

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out that there are some more considerations of this type which experience has brought home to us during the past one year, and they should stand us in good stead in considering the Draft that is before us.

Another important point which has been harped upon from this platform is about linguistic provinces and the question of language. The battle of languages has been or is being fought almost from day to day—it comes up in a number of dubious ways. But I think that when once we have all agreed that there should be a *lingua franca,* a national language, I do not think that we should quarrel any more about details and emphasise unnecessarily the point that our Constitution itself should be in that language. With due respect to the Hindi Language—or Hindustani or whatever we may call it—I should say that it has not yet developed the connotations, that are necessary for its free use in legalistic and constitutional works as well as constitutional methods and interpretation. Therefore, it is absolutely necessary that we should wait a little more before we rush in that way. I would plead that we should pass the Constitution in the English language and we should also have a good Hindi translation of it, but so far as an authoritative version is concerned, for the next few years the English one should be that authoritative version. That, of course, is my humble opinion.

Now, the old hatred or rather the dislike for the English language must really lapse with the 15th of August 1947. Before the 15th August 1947, we were using the English language as slaves, and therefore we ought to have felt the revulsion that we were feeling. But today, it is out of choice, out of the merits of that language possibly, out of the difficulties of the situation, on account of the heterogeneous languages which so many of us speak that we take to it, we rely on it for some period; and that I think should be the best way of doing things. It is from the point of view of arriving at the highest common measure, what may be called the highest common factor, that we ought to look at this problem; then I hope we shall be coming to a very good conclusion and a harmonious one.

Now about linguistic provinces. The question is before the Commission that has been appointed by the President of our Assembly; it is premature to say anything about it. Really speaking, I wish that none had referred to it from this platform. But since it has been referred to, I should think that this question should not in any way be shelved or postponed since this Constituent Assembly is there; and since we are considering the whole future of the country as well as of the Provinces, it is no use simply brushing it aside saying that there are difficulties in the way. If there are difficulties, well, we are all here to see that those difficulties are removed. I do not think that there are insuperable difficulties which we cannot over come as a nation. We have over come greater difficulties, possibly we shall have to over come far greater difficulties in future, and at such a time it is necessary that each limb of the nation, each group in the country, feels that its future is assured, that its development is assured and that there is no danger of its being suppressed or neglected in the future Constitution of India.

Sir, I once more urge that we should not be in a hurry about this Constitution—it might take a few days more or a few days less. I would urge you to take fully into consideration the experience that we have had during the whole year and bring that experience to bear upon the provisions of the Draft Constitution that we have before us.

With these few remarks, I commend the Draft and congratulate once again the Drafting Committee and its able Chairman and on the way in which he has presented this Draft to this House.

Shri Himmat Singh K. Maheshwari (Sikkim-and-Cooch Behar): Mr. Vice-President, Sir, the House has during the past two days heard some very vigorous and useful criticisms on the Draft—before it. It is not my intention to repeat or to paraphrase any of the suggestions that have been made. I shall permit myself to make only one general comment and to make one appeal.

The general comment that I wish to make is that the Draft tends to make people, or will tend to make people, more litigious, more inclined to go to law courts, less truthful and less likely to follow the methods of truth and non-violence. If I may say so, Sir, the Draft is really a lawyers' paradise. It opens up vast avenues of litigation and will give our able and ingenious lawyers plenty of work to do. Whether this will help the nation as a whole, is extremely doubtful.

Many of the provisions of the Draft confer benefits or concessions of a somewhat illusory character. Some of them, in my opinion, are even harmful. The question then is: what is this blemish due to? I shall hazard an answer: the answer is that the raw material out of which this Draft has been made is all foreign. The ideas are foreign, the garb is foreign, and what is more, the form is top-heavy. With these disadvantages I am afraid it was not possible to do much better than what the Committee has done. Whether at this stage it will be possible to remove these defects I am unable to say. But I wish to put in a strong plea that when the Draft is examined clause by clause by the House, every effort should be made to expunge all unnecessary provisions and provisions which might more conveniently be left for legislation by the Dominion Parliament in future.

The appeal which I wish to make to the House is in connection with a subject which has been touched upon by a number of speakers today and yesterday. It is in connection with reservation of seats in the legislatures for the minorities—Muslims, Sikhs, Scheduled Castes and others. My friend Mr. Karimuddin sounded a very healthy note yesterday when he opposed reservation of seats for Muslims. From my personal experience in the State which I represent, I am able to say that the refusal to grant separate electorates and the refusal to grant reservation of seats in the legislatures to Muslims during the last 25 or 30 years has had the most beneficial results in my State. The result has been that Hindus and Muslims have always been on the most friendly terms and have, even during the troublous times of 1946, 1947 and this year, remained on the most friendly terms without breaking each others' heads. They co-operate in every field of life and are the best of friends. Reservations are bound to encourage separatism and postpone at least for some time the realisation of the dream which we have, namely, that of evolving a truly secular State. As long as any community demands and gets reservation of seats in the legislatures a truly secular State, in my opinion, must remain a distant dream. I therefore make a most earnest appeal to my friends of all minority communities to drop their claim for reservations voluntarily so that this Constitution may start off as a truly democratic, virile, strong Constitution without any draw backs to begin with. One of our Sikh friends yesterday, as far as I could understand him, also put in a plea I believe against reservation. That is a very healthy sign. I have still to hear what the Scheduled Castes in this House have to say. Personally, Sir, I have always felt that giving any person the name of a Scheduled Caste involves a stigma.

(At this stage the bell was rung indicating that the Member's time was up.)

I bow to your call, Sir. I have said nearly all that I wanted to say.

Mr. Vice-President : The House stands adjourned till 10 o'clock on Monday, the 8th November 1948.

The Assembly then adjourned till Ten of the Clock on Monday, the 8th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 8*th November,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the pledge and signed the Register:

1. Mr. H. P. Mody (Bombay : General).

MOTION *re.* DRAFT CONSTITUTION—(Contd.)

Mr. Vice-President (Dr. H. C. Mookherjee): It has been the decision of the House that we should close the general discussion today. There are about sixty names on my list and it is obviously impossible for me to give an opportunity.....

Many Honourable Members: We cannot hear you, Sir. Evidently the mike is not working.

Mr. Vice-President : It is obviously impossible for me to give an opportunity to every Member who wishes to speak. I have therefore decided to give Members of the minority communities the opportunity to speak first. Mr. Mahboob Ali Baig.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim): Mr. Vice-President, Sir, Dr. Ambedkar's analysis and review were remarkably lucid, masterly and exceedingly instructive and explanatory. One may not agree with his views but it is impossible to withhold praise for his unique performance in delivering the speech he did while introducing his motion for the consideration of this House.

I am afraid, Sir, I am unable to agree with either the form of Government or the form of constitution embodied in the Draft Constitution or the reasons that Dr. Ambedkar gave in their justification.

Firstly, let me deal with the form of Government. Dr. Ambedkar's view is that the British parliamentary executive is preferable to the American non-parliamentary executive on the ground that the former is more responsible though less stable, while the latter is more stable but less responsible. I am inclined to think, Sir, that the advantages of the parliamentary executive have been exaggerated and its defects minimised. It is common knowledge—and from experience also we have found—that the responsible executive under which we have been working for the last two decades has pointedly brought to our attention the fact that a removable parliamentary executive is at the mercy of hostile groups in their own party. Very little time is left to the executive to achieve the programme which is before it. It is so unstable. It is always in fear of being turned out by no-confidence motions. Further, Sir, it is there that the seeds of corruption are sown. A corrupt party-man cannot be turned out by the electorate under the present Constitution or under the proposed Constitution. The Minister or Ministers have always to be very careful to satisfy the various elements in their party in all their legitimate and illegitimate demands. This is the opinion also, Sir, of the Commission that was sent out to India sometime ago, called the Simon-Attlee Commission. It was clearly said that the Ministry is so much engaged in cajoling, in satisfying

[Mahboob Ali Baig Sahib Bahadur]

its Parliament that there is hardly time to look after its administration or to put into effect its schemes. That is a very serious defect. Further, I have heard several members of the party saying: "Well, we cannot vote according to our conscience. There is the Party Whip. God save us from this party system". This is what has been expressed by many honest legislators. Further, Sir, as I said, there is no stability at all.

The third point I would like to urge against this parliamentary executive is that it cannot reflect the several sections of the country. The defects are so overwhelmingly great that I should rather prefer a stable Government, a government which does not stand in fear of being turned out overnight, because it was not able to satisfy some corrupt supporters of their party. Now, it is true in a democratic Government, the executive must be responsible. Let us see whether there is any other system of Government which has both responsibility and stability. It is no doubt true that in the American system there is less responsibility and more stability. But if you look at another system of Government, namely, the Swiss form of Government, where the elected Parliament again in its turn elects the executive, there the responsibility is emphasized. Having elected its executive, it leaves the executive to work out its schemes in a satisfactory way for a period of four years and the decisions of the Parliament are binding on that executive, unlike in the case of the American Presidential executive. Therefore, if we want both stability and responsibility, the Swiss system of executive is preferable.

Now, Sir, with regard to the form of Constitution, I am unable to agree with the Constitution that is embodied in the Draft Constitution. People seem to think that the Centre must be strong, and that unless the Centre is very strong the provinces will always be an impediment in the way of the Centre becoming strong. That is a wrong view. If provinces are made autonomous, that does not necessarily mean that the Centre will be rendered weak. What do we find here? My view is that the provinces will be nothing but glorified District Boards. Look at Article 275 where in an emergency all powers can be usurped by the Centre. Look at articles 226, 227 and 229. The Centre can legislate for the provinces in all matters; and look at the long Union List and the Concurrent List. All these clearly show that in the hands of a Central Government which wants to override and convert this federal system into a unitary system, it can be easily done. Now there is a danger of this sort of Government becoming totalitarian. This is the danger in the form of the Constitution that is embodied in the Draft Constitution. Now to add to this, look at the Fundamental Rights that are enunciated. Can they be called Fundamental Rights at all? Fundamental Rights are those which are fundamental in character, unchangeable except in extreme circumstances. But what do you find here? These Fundamental Rights are hedged in by provisos, by overriding exceptions. There is a little confusion also in that chapter that deals with Fundamental Rights. It is said that from experience, it is found that instead of a Supreme Court deciding whether the Government cannot under certain circumstances override the Fundamental Rights, provision is made in the draft itself; and it is claimed, Sir, in the provisions for the form of Constitution that it must be a flexible Constitution. May I, with due respect to Dr. Ambedkar, state that the rigidity and the legalism which he says must be avoided are the very essence of a written Constitution? It is not an unwritten Constitution as in the case of Britain. In the case of Britain, Sir, it is a matter of history. It is an unwritten Constitution and it has suited the peculiar genius of the British people to go on with their work without any written constitution and the peculiar parliamentary democracy suited the British Government. The very rigidity and the legalism which Dr. Ambedkar complained of a necessary and unavoidable

characteristic of a written constitution. We do not want to be so flexible as to allow any Government to ride rough-shod over the fundamental rights. They are not written rights at all if they are hedged in by so many exceptions. What is stated as Fundamental Rights, in the very article they have been rendered useless. Further, with regard to these Fundamental Rights, it is stated in section 13 that nothing contained in this shall in any way affect the operation of the existing laws. You know very well how reactionary the existing laws have been. No doubt in Article 8 it is stated that all laws which are inconsistent with the Fundamental Rights must go, but in article 13 it is said that the existing laws must prevail as against the Fundamental Rights. Not only there is contradiction here but there is confusion. I could understand, Sir, if under Article 8 a list of Acts and their sections have been mentioned as well as those which have been annulled. That section does not make it clear. In these circumstances, Sir, I am afraid, there are no fundamental rights at all.

One thing with regard to minority rights I am bound to say. There is nowhere any mention of provisions which safeguard the personal law of the people. You know, Sir, in India, at least, people of several communities are governed by personal laws based on their religion. It is possible to legislate with regard to personal laws also. That would go against the claims that this government is going to be secular, which would not interfere with the religious rights of the people.

Sir, one word with regard to reservation. Some Muslim friends of mine, especially Mr. Karimuddin has stated that he does not want reservation for his community. But, when I had a talk with him, he clearly stated that when there are no separate electorates, the people who will be returned will be those put up by the majority community, and therefore, the Muslim candidates who really represent the Muslims may not be elected. That seems to be the reason why he did not want reservation. If we can find out a way by which the Muslims who are elected would truly represent their community, there should be no objection. If in case of minorities a device is found, for instance, the election being based on what is called proportional representation by the system of single transferable vote, if such a device is made by the party in power, by the persons responsible for the framing of the constitution, I think that might go a long way. In the absence of such a device, in the absence of separate electorates, I do not think I will be voicing the opinion of my community if I gave up this reservation that has been agreed to in the Minorities Sub-Committee. Therefore, Sir, I feel, on the whole, that this draft has not been very satisfactory. There is almost a certainty that this system of Government would lead to fascism or totalitarianism and it is capable of riding rough-shod over the valued rights of the citizens and also of the minorities.

Mr. Z. H. Lari (United Provinces : Muslim): Mr. Vice-President, Sir, before making my submissions on the draft Constitution, I would like to lodge a protest. The Constituent Assembly refrained from taking any decision as to the language question, and had postponed its consideration to a future stage. But the Drafting Committee, of its own accord, inserted a clause laying down that Hindi and English shall be the languages for transacting the business of the House. In today's paper I saw a report that the Muslim members from the United Provinces and Bihar have agreed that Hindi with Devanagari script shall be the official language. I therefore think it necessary to repudiate that statement at the very outset, and say clearly that we stand for Hindustani written in either script as the national language of our motherland. So far as English is concerned, I think it is necessary to retain it for some years to enable those who are not acquainted with Hindustani to be able to take an effective part in the discussions in the House.

[Mr. Z. H. Lari]

An Honourable Member from Madras was right when he said that there should be no linguistic imperialism. For that reason, Hindustani written in either script alongwith English should be the languages used for transacting the business of the House.

Coming to the Draft Constitution, which is primarily intended to usher in a democratic secular republic, we have to see how far the contents, the form and the spirit of the provisions contained therein are calculated to promote the Objectives Resolution unanimously adopted by this House and universally acclaimed by the country. To assess the provisions of the Draft Constitution, we have to see how far the Draft Constitution ensures the inherent rights of man, rights without which life is not worth living, how far the provisions safeguard against possible prostitution of democratic forms for totalitarianism, how far the provisions ensure justice if not generosity for the minorities and lastly, how far they ensure the independent development of the various national elements in the country. In order to assess the value of the provisions, we have to bear in mind two things: firstly, certain admissions made by the honourable Mover of the Resolution, I mean the Honourable Dr. Ambedkar, and secondly our experience of the working of democracy in the last fifteen months after the attainment of independence. When the House adopted resolutions which are the basis of the Draft Constitution, we had no such experience before us; but now we have. The first admission that the honourable Mover made was, and I will use his own words: "Democracy in India is only a top-dressing on Indian soil, which is essentially undemocratic"..... "It is wiser not trust the legislatures to prescribe forms of administration." With respect, I say he is mainly right.

An Honourable Member : He is wrong.

Mr. Z. H. Lari : I would like to point out in this connection the various Security Acts which have been passed by the various legislatures, particularly the Safety Act in one province which even excluded the right to move the High Courts under section 491 of the Criminal Procedure Code. The second admission that he made is: "Constitutional morality is not a natural sentiment. It has to be cultivated. We must realise that our people have yet to learn it."

I say not only the people but even our Governments have to learn it. To prove this I will cite only two instances. The House will remember that in Calcutta—in Bengal—the High Court was seized of a case and had appointed a full Bench to decide as to what is the effect of the word 'reasonable' in an enactment dealing with Government's power to arrest and detain. The Bench was to meet only next day but the Government came out with an Ordinance laying down that the word 'reasonable' shall be held to have been deleted. No doubt, as the High Court remarked in that case 'His Excellency the Governor of the Province' was fully within his rights to enact an Ordinance but it was against constitutional morality. The second instance which I would place before the House is that the head of an autonomous institution—I mean the Aligarh University—was only the other day asked to quit and give place to another man although that head had the confidence of the University Court and of the community to which the institution appertains. I say therefore in assessing the value of the provisions we have to keep in view these two admissions made by the Honourable Minister, as well as the recent working of the democracies during the last fifteen months.

Now the first requirement of a citizen is there must be security of life and there must be safeguard of liberty. This august House when considering the Draft Fundamental Rights laid down that nobody should be deprived of life and liberty except in accordance with due process of law. Now those words have been substituted by the words 'procedure established by law'. That absolutely nullifies the intention of those who wanted this article to appear in the Constitu-

tion. The moment you say that a person may be deprived of personal liberty and life "in accordance with procedure" it becomes open to the legislature to frame any legislation affecting life and liberty. That nullifies the very intention. Therefore the substitution of the original clause is absolutely essential. In the Introduction to the Draft Constitution reference is made to the Japanese and Irish Constitutions but those responsible for those constitutions had laid down the procedure itself. For instance it is laid down there that everybody arrested shall have the right to be given the cause of arrest and he will have the right to get it adjudicated by courts. Therefore so far as Japanese and Irish Constitutions are concerned, they have laid down the procedure and after laying down the procedure, the Constitution says 'Nobody can be deprived of life and liberty except in accordance with procedure as established by law'. I submit that the examples of Ireland and Japan have no relevance.

Next to individual liberty and life comes the sanctity of one's house. One's house has been said to be a citadel, and it is of sanctity for him. In all democratic constitutions you will find that no searches or seizures can be made in the houses except on causes shown and on complaints specifying the reason thereof and thing to be seized. Similar articles should appear in our Constitution.

The next necessity of the individual is the right to have elementary education. That is singularly absent in the Fundamental Rights. In the Directive Principles of State Policy it is contained that it shall be the endeavour of the State to provide elementary education. My submission would be that that is absolutely insufficient. What is necessary is that it should be the duty of the State to provide elementary education and such a provision should exist in the Constitution among the Fundamental articles.

Now I come to Article 13 which refers to freedom of speech, assembly or association. These are conceded but have been hedged in by such provisos and conditions that they reduce them to a nullity. I think addition of the words 'subject to reasonable requirements of public order and morality' would be enough. The Honourable Mover said that in America these rights have been circumscribed by judicial decisions, but when judicial decisions circumscribing those rights are given, they are given out of necessities of State. I think the addition of the words 'subject to reasonable requirements of public order and morality' would do. I submit that Fundamental Rights as conceded in the Draft Constitution are indefinite, insufficient and in certain particulars, vague.

The next item I would like to bring before you is this. The twin principles of democracy are that everybody has a right to representation and the majority has the right to govern. The electoral system, therefore, must be such as to ensure representation to everybody. This is the significance of adult franchise but the method adopted, *viz.,* that of single member constituency really amounts to disenfranchisement of 49 per cent of the voters. It is possible in a single member constituency to disenfranchise even a minority extending to 49 per cent. I am talking of political minority. Even political minorities are entitled to be represented in representative institutions. Therefore the system which is laid down in this Constitution needs revision. It may be said it prevails in England but this is why I drew the attention of the House to certain basic facts to which the Honourable Mover has referred and I would say it would be more advisable to follow the Irish, Swiss and now France in regard to introduction of proportional representation by single transferable or cumulative voting. It may be said that such system leads to multiplicity of parties. This has been in vogue for 25 years in Ireland and everyone is aware that one party governed the country for more than fifteen years and there had been not more than two parties. France had a plethora of parties even when there was no proportional representation. It is better for us to adopt this principle which is more progressive in instinct and which is really democratic.

I come to another feature of the Constitution, *viz.,* the Ordinance. There was a time when we used to complain that Ordinance was the rule and legislature was hardly consulted. I may here refer to the Father of the Nation who said: "Under the British rule the Viceroy could issue Ordinance for making laws and executing them. There was a hue and cry against the combination of legislative and executive functions. Nothing has happened to warrant a change in our opinion. There should be no Ordinance rule. The Legislative Assemblies should be the only Law makers". It is said when the Assembly is not meeting, an emergency arises, and an Ordinance has to be promulgated. But there is no significance of time and space and you can get an Assembly within two days and it is not at all difficult. Even if a necessity existed, that has disappeared; and moreover what is its effect? Because of the use of Ordinance-making powers the Assembly has become a rubber-stamp. In our province I know there is hardly any legislation which is not preceded by an Ordinance and in a Parliamentary Government where the Cabinet determines really the policy of the majority, once the Cabinet has framed an Ordinance and it comes forward in the form of a legislation, it is impossible for the major party to go back and therefore it is the Cabinet which determines the legislation. I would accordingly submit that there is really no necessity of a provision requiring powers of issuing Ordinance.

Then there is the contingency of emergency. No doubt an emergency clause should be there. But such is the wide scope of the emergency as put in the Draft Constitution, that not only actual violence, not only actual invasion as in the case of America, but threat of violence is enough to warrant declaration of emergency. These features are dangerous and must be eliminated.

I will now come to that portion of the draft which deals with minority rights. In dealing with these rights the first thing that has to be seen is reservation of seats. That is the one unique feature of the Constitution—that a minority is said to be safeguarded by means of reservation of seats, without ensuring that the minority concerned has any right or voice in determining its representative. This is meaningless and even deceptive. The only means of safeguarding minorities is by adopting the system of proportional representation. A writer in the Round Table of March 1948 referring to this system and its working in Ireland said that this solved the question of reconciling justice to minorities with the necessities of a stable Government.

Then I come to the Services. What a strange contrast! In the Legislature you have got statutory reservations where they are meaningless, but when you come to the Services it is merely said their claims shall be considered. This is a very pious wish. The experience of the last fifteen months in the United Provinces and in other provinces has shown that mere pious wishes are not enough. There must be statutory reservations. Take away the reservation from the Legislature and for God's sake give us reservation in the Services. Here I speak not only for the Muslims of the United Provinces but also for other minority people. You concede reservations to Anglo-Indians but you deny it to the Muslims. Why this discrimination? Take the situation in the United Provinces. If you persue the results of the last twelve months there, hardly five per cent of the Muslims have been taken in the services. I say if you take into account their discharges and dismissals it will be 75 per cent, but if you take new recruitment—it is hardly 5 per cent.

Shri Vishwambhar Dayal Tripathi (United Provinces : General): What did your leaders do in Pakistan?

Mr. Z. H. Lari : My friend wants me to follow in the footsteps of Pakistan. I am not going to do so.

Mr. Vice-President : Order, order.

Mr. Z. H. Lari : I have not mortgaged my rights to Pakistan. I stand here as a citizen of India. What Pakistan does or does not do is not my concern.

An Honourable Member : You have grown wise today!

Mr. Vice-President : Order, order.

Mr. Z. H. Lari : We never said that Muslims in these parts are going to migrate to Pakistan. We are the children of the soil and as such we claim the rights of citizens of India.

Shri Vishwambhar Dayal Tripathi : Even your U. P. leader has escaped!

Mr. Z. H. Lari : Interruptions only show how uncharitable and how undemocratic are these.....

Mr. Vice President : Order, order.

Mr. Z. H. Lari : I Submit to the order. I was saying that my time was very short.

Mr. Vice-President : It has gone already!

Mr. Z. H. Lari : Give me two minutes more please.

Now there is the question of the Cabinet. I admit there can be no statutory representation there. In a parliamentary system of Government it is inconceivable. But you have to consider whether, after introducing proportional representation, it is not proper for us to go back to the Presidential system. In that case it will be possible to have the election of the Cabinet on the Swiss system. But in the present set-up of the Constitution I admit that statutory reservation is impossible and the best that could be done has been done.

Lastly, I would beg of this House to consider that there must be some provision which should recognise the existence of an opposition in the Legislature. Of late since the Socialists seceded from the Congress, there have been utterances from responsible men indicating that the majority party—I do not say this is a confirmed opinion — are not very charitably disposed towards such an opposition. Just as it is in South Africa, or in England or in other countries, the position of the Leader of the Opposition should be accepted, and the one means of accepting is that it should be provided that he should be also granted a salary as in other countries. We know that in the system that is coming, men like myself have no chance to come back. Therefore, it is not in our interest but in the interests of democracy that there should be a proper Opposition which is constructive and charged with a duty to the country, and the motherland, and this can be assured only when you give a status to it in the Constitution itself.

I notice that in the further amendments provided by the Drafting Committee, there is a suggestion for the appointment of an Advisory Committee to advise the President and there the position of the Leader of the Opposition has been recognised. But his position should be recognised even in the Constitution for the Union and for the States.

With these few submissions I conclude. I have made references to certain admission by Dr. Ambedkar but all the same I have faith in the goodness of my countrymen and in the catholic spirit of those who inhabit this motherland, and I hope that they will rise to the occasion, and now that the critical phase has passed, now that passions have subsided, they will be more realistic and more conciliatory so that there may be an even balance in the country between the majority and the minority, not only theoretically but actually, so that we may concentrate on making India great.

Mr. Hussain Imam (Bihar : Muslim): I wish to say a few words on the Constitution as it has been presented to us. My task has been lightened a

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great deal by the previous speakers who have referred to many of the questions to which I wished to refer.

I must say that I find the position of the President of the Drafting Committee unenviable. He has been attacked from the left for not having copied the Soviet Constitution, and from the right for not having gone back to the village panchayat as his unit. May I say that there is an element of confusion in some our friends minds, when they want that the Constitution should provide for all the ills to which Indians are subject? It is not part of the Constitution that it should provide for cloth and food. A very revered Member of this Constituent Assembly regretted that this Constitution does not contain any provision for that purpose. My submission, Sir, is that the Constitution is based on the needs of a country to which it is applied. We have to see whether this Constitution does supply those essentials which are peculiar to our own circumstances.

The first lacuna which I find is that there is no mention of the sovereignty of the people. Unless you accept the principle of sovereignty of the people that all power is derived from the people and all Constitutions are based on the will of the people, the result will be confusion.

This has resulted in confusion. For instance, take what was formerly called the Indian States and the British Indian Provinces. The way in which the two have been treated is scarcely just and equitable. We find that people who mainly fought for the achievement of Swaraj or self-rule have lesser power than the people of the States, who did not participate as much in the struggle as we of the Indian provinces. The customs income of certain States has to be compensated by means of central grants. We have been told that there is one citizenship, the citizenship of India. With one-citizenship rights, can the people of the States have different rights? In the Indian States the people will be free from income-tax and income-tax can only be applied to the British Indian provinces. Corporation tax is not levied there except in so far as it might be applicable to one or two Indian States. I therefore suggest that there should be uniformity with a single kind of suzerainty. That is my first fundamental objection to the Draft Constitution.

Secondly, as Dr. Ambedkar himself has pointed out, I think there must not be any differentiation between the provinces and the States. The right to maintain an army which has been given to the Indian States is wrong. India is in a dynamic condition. Thanks to the sagacity and firmness of Sardar Patel, the question of the Indian States has been solved to a great extent and they are no longer a stumbling block in our way. I was very glad to hear yesterday the Prime Minister of the Jodhpur State and one representative gentleman from Madhya Bharat speaking, in which they themselves came forward with the idea of uniformity with the Indian provinces. There is no reason why the portals of the Supreme Court should be closed to the citizens of Indian States. If they are citizens of India, they have as much right as we have to go to this court for the adjudication of their interests and rights. I think that it is all due to the fact that we have not conceded the suzerainty of the people nor the proposition that with uniformity you get as a matter of course a system under which every one will be equal before the law in power and in responsibility.

I was also surprised that a learned pundit of constitutional law like Dr. Ambedkar should have skipped over the fact that the responsibility of the non-parliamentary executive is not less than that of the parliamentary executive. If it is examined it will be found that the committees of the House of Representatives and the Senate in U.S.A. exercise far greater control than the control exercised by the House of Commons. It is wrong to say that the

Executive in the U.S.A. only comes in for a corrective after four years' term of the President. He is subject to day-to-day control and that control is far greater in the case of the Senate Committees and the House of Representatives than it is in the case of the British Parliament. A very well-known instance is the failure of President Wilson to carry forward his move for the League of Nations, because it was the Senate Committee which did not consent to it. Even the appointment of ambassadors to other countries is subject to the control of the Senate. Therefore it is wrong to say that in the presidential non-parliamentary system there is no control and the control if at all is very remote. It is as intimate if not more intimate than in the British system of parliamentary control. I do not wish to discuss this aspect of the matter further as I shall have opportunities later when we will be discussing this subject again.

I might mention in this connection, as I said earlier, that the constitution must be framed to fit in with the needs of the country. I ask leaders to examine conditions in India. Look at the U. P., the centre of India, where the only other political party that you have got, *viz.,* the Socialist Party, was supposed to be the strongest. What was the result in the local board and district board elections? They were beaten. In the Parliamentary elections out of twelve seats vacated by them every one of them was lost. Is this the way in which you can maintain parliamentary democracy? In a parliamentary democracy it is necessary that we must have an effective opposition. You can never have an effective opposition if you have single seat constituencies. It is only by means of a system of proportional representation that you can avoid the danger of reducing India to a Fascist State. I make this observation in all humility that for the preservation of democracy in India it is necessary that you must have a system where by an opposition may be allowed to come in. The popularity, the prestige and the name of the Congress are so great that it is impossible for anyone to come in opposition to the Congress and the result of this is, as has been seen many times in England, that the majority of the electors are disfranchised in this way that if there is a three-cornered contest the defeated candidates might together get more than the successful one. Even conceding that there will be no three-cornered contest a large part of the electorate is disfranchised. Even if you have 60 and 40 per cent. voting, 40 per cent. have no representation in the country, whereas under the system of proportional representation which is prevailing in most of the new advanced countries of Europe you will have representation in which every shade of opinion will be represented.....

Shri. L. Krishnaswami Bharathi (Madras: General): What are those countries in Europe where there is proportional representation at general elections?

Mr. Hussain Imam : In the U.S.A. there is proportional representation.....

Several Honourable Members : No, no.

Mr. Hussain Imam : Switzerland has got it. (Voices: No, no.) Even if nobody has got it, if it is necessary for us, we should not follow what others have done. As I said in the beginning, a constitution must be framed suitable to the needs of the country and not necessarily in line with what others have been doing.

I might explain a point which was made by the previous speaker, *viz.*, that the personal law of the minorities should be safeguarded. The majority need not have the safeguard, because they are the majority, and nothing can be passed in the legislature without their full consent and concurrence, whereas, the minority have not got this privilege and therefore it is necessary that the personal law of the Muslims and other minorities who so desire should be

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preserved from interference by the legislature without the concurrence of a vast majority of the members thereof.

Adverting to the question of reservation, as Mr. Lari has said reservation in the legislature is no good when there is no method of proper representation. I therefore say that proportional representation, in addition to being a very necessary item for the preservation of an opposition in the country, would also serve the interest of the minorities. There will be no need to have reservation for minorities provided you give proportional representation insufficiently large numbers.

For instance, one or two constituencies in each district may be made multi-member constituencies with ten or twelve seats in each. And, if you have the Lists system which prevailed sometime ago in Germany, that would serve a greater purpose; because voting will be on the basis of parties and not on the basis of persons. We want representation more in groups than individually. We do not want the spectacle of France repeated in India. But we do not wish to have a one-party Government which is liable to degenerate into something anti-democratic.

Before I conclude, Sir, I wish to say few words on the language question. I am not going to say anything in opposition to the prevailing sentiment on this matter. The need for the continuance of the English language for the time being has been advocated by the South. But as far as Hindi is concerned, there is no difference of opinion, provided we know what is Hindi. I personally am prepared to adopt the language spoken by Sardar Patel and the language in which he delivered his recent address at Bombay. He does not come from the Urdu-speaking tracts. He is a Gujerati. He speaks the language which is spoken by people everywhere. I had occasion to listen to the radio-relay of his speech at Chowpathi and I found that it was nothing but Hindustani or whatever name you give it. To me the language in which he spoke at Chowpathi was Hindustani. It is a language which is far better understood by the people than the language used by the Department under him, the A.I.R.

We have been told, Sir, that in this respect too, we are following the Gandhian conception. But people forget that Mahatma Gandhi stood for Hindustani to the last moment. He stood for Hindustani, in both Devnagri and Urdu scripts. Devnagri, as far as the script is concerned has nothing to rival it. It is the best possible medium. But what about the language? Hindi (you may call Hindustani), unless you mix it up with big Sanskrit words and fill it up with all common genders, is Hindustani. As I said, the language of the Deputy Prime Minister, coming from a province not speaking Urdu, should be our criterion and guidance. If the Members of the Constituent Assembly are willing to accept it I suggest that Hindustani, written in both Devnagri and Urdu, which was the last wish of Mahatma Gandhi and the most accepted in India today, should be adopted as the national language.

Sir, the Constitution is only framed once. It is not a thing which is done every other day. So it is but right and proper that in framing it we should give the utmost consideration, cool consideration, without heat and without rancour or mental reservations. I appeal to the House that they should forget and forgive the past. It is very painful, Sir, to be reminded every day that we are responsible for bringing Pakistan into existence. In its creation the Congress was as much a party as anybody else. In that spirit I request that Muslims should not be regarded as hostages. They should be regarded as citizens of India with as much right to live and enjoy the amenities of India—the land of their birth—as anyone else. I conclude my speech.

Begum Aizaz Rasul (United Provinces : Muslim): Sir, I congratulate the Honourable Dr. Ambedkar for his lucid and illuminating exposition of the draft Constitution. He and the Drafting Committee had no ordinary task to perform and they deserve our thanks.

Sir, I feel it a great privilege to be associated with the framing of the Constitution. I am aware of the solemnity of the occasion. After two centuries of slavery India has emerged from the darkness of bondage into the light of freedom, and today, on this historic occasion we are gathered here to draw up a constitution for Free India which will give shape to our future destiny and carve out the social, political and economic status of the three hundred million people living in this vast sub-continent. We should therefore be fully aware of our responsibilities and set to this task with the point of view of how best to evolve a system best suited to the needs, requirements, culture and genius of the people living here.

Much has been said about the fact that most of the provisions have been borrowed from the Constitution of the U.S.A., England, Australia, Canada, Switzerland, etc. Sir, I for my part see nothing wrong in so borrowing as long as the higher interests of the Nation and the well-being and prosperity of the country are kept in mind. There is no doubt that the draft Constitution has been framed to fit in with the present administration. But this had to be so in the very nature of things. After all, we have all become used to a certain way of life of government and of administration. If the draft Constitution had changed the whole structure of Government, there would have been chaos. India is a new recruit to the democratic form of Government. Its people have been used to centuries of autocratic rule and, therefore, to carry on more or less on the lines they have been accustomed for some time more, with changes here and there according to changed conditions, is the best thing possible. The important thing is that power is derived from the people and it is the people who will make or mar the destiny of India.

A lot of criticism has been made about Dr. Ambedkar's remark regarding village polity. Sir, I entirely agree with him. Modern tendency is towards the right of the citizen as against any corporate body and village panchayats can be very autocratic.

Sir, coming to the Fundamental Rights, I find that what has been given with one hand has been taken away by the other. Fundamental Rights should be such that they should not be liable to reservations and to changes by Acts of legislature. It is essential that some at least of the civil liberties of the citizen should be preserved by the Constitution and it should not be easy for the legislature to take them away. Instead of this, we find the provision relating to these Rights full of provisos and exceptions. This means that what has been given today could easily be changed tomorrow by an Act of the legislature.

To my mind it is necessary that some sort of agency should be provided to see that the Fundamental Rights and the Directive Principles are being observed in all provinces in the letter and in the spirit. Otherwise it may be that the absence of such an agency may give rise to the formation of communal organisations with the object of watching the interests of their respective communities. It should be the function of the agency I have suggested to bring to the notice of the Government the cases where the Fundamental Rights and the Directive Principles are not being followed properly. I hope this point of mine will be seriously considered by this august Assembly when we come to discuss the Draft Constitution clause by clause.

Sir, as a woman, I have very great satisfaction in the fact that no discrimination will be made on account of sex. It is in the fitness of things that

[Begum Aizaz Rasul]

such a provision should have been made in the Draft Constitution, and I am sure women can look forward to equality of opportunity under the new Constitution.

Sir, I will not go into the details of the Constitution because I shall deal with the various provisions as we discuss the Constitution clause by clause, but there are a few fundamental issues which have been raised and discussed on the floor of this House during the last two or three days to which I may refer in passing.

Sir, the question of the reservation of seats for the minorities has engaged the attention of this House. It is true, Sir, that last year on the recommendations of the minorities Sub-Committee, this House accepted the principle of the reservation of seats for certain communities. At that time also I was opposed to this reservation of seats, and today again I repeat that in the new set-up with joint electorates it is absolutely meaningless to have reservation of seats for any minority. We have to depend upon the good-will of the majority community. Therefore speaking for the Muslims I say that to ask for reservation of seats seems to my mind quite pointless, but I do agree with Dr. Ambedkar that it is for the majority to realise its duty not to discriminate against any minority. Sir, if that principle that the majority should not discriminate against any minority is accepted, I can assure you that we will not ask for any reservation of seats as far as the Muslims are concerned. We feel that our interests are absolutely identical with those of the majority, and expect that the majority would deal justly and fairly with all minorities. At the same time, as has been pointed out by some honourable Members in their speeches, reservation of seats for minorities in the Services is a very essential thing and I hope that the members of this House will consider it when we deal with that question.

Then, Sir, another question which has been engaging the attention of this House is the question of language. Sir, the question of language in its very nature is a very important question because after all we have to devise something which is most acceptable to the people living in this country. It is quite true that the language of the country should be the language that is mostly spoken and understood by the people of the country, and I do not deny the fact that Hindi is the language which is understood and spoken by the majority of the people (*hear, hear*), but, Sir, the word 'Hindi' as it is being interpreted today is a very wrong interpretation. After all there is not much difference between Hindi and Hindustani. Every one will bear witness to the fact that the language spoken in the country, whether by Hindus or Muslims, is a very different language to that which is being described as Hindi and which is being advocated by the protagonists of Hindi. What is advocated is Sanskritised Hindi which is only understood by a small section of the people. If we take the villages, the language spoken there is very different to what is called Hindi here.

Then, Sir, I do not think that the forty million Muslims living in this country can immediately be asked to change their language. I agree that we will have to learn Hindi in the Devnagri script, but some time must be given to us to effect the change-over. It is very unfair of you to ask us suddenly to transact all the business of the state as well as the business in the legislatures in a language that we are not conversant with. I therefore feel that this is a matter which should be calmly and coolly considered. After all, this is not a matter which can be decided on the spur of the moment or on grounds of sentiment or passion. We have to keep in mind the requirements of the country. The Father of the Nation up to the last advocated Hindus-

tani written in both the scripts as the only language which is most suitable and which can be acceptable to the mass of the people living in this country. I therefore recommend that, whereas Hindi in the Devanagri Script can be made the ultimate *lingua franca* of the country, a certain time limit, say about 15 years, must be given for the change over and until then Hindustani in both the scripts should remain the language of India.

In conclusion, Sir, I would say that whatever we put in this constitution, we must see that all our efforts are concentrated to make India strong and prosperous with equality of opportunity, happiness and prosperity for all so that India may lead the countries of the world on the path of peace and progress.

Dr. Monomohan Das (West Bengal : General): Mr. Vice-President, Sir, a few days have passed since the Draft Constitution was introduced on the floor of this House by our able Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. During these few days, the Draft Constitution has met with scorching criticism at the hands of different members of this House. With the exception of a very few members who questioned the very competency and authenticity of this House to pass the Draft Constitution, all the other Members have been unanimous in their verdict. They have accepted the Draft Constitution with some alterations, additions and omissions, in some clauses and articles, as a fairly workable one to begin with. One very reassuring feature that we find in the Constitution is the single citizenship. As the Chairman of the Drafting Committee has said, unlike the American Constitution, the Draft Constitution has given us a single citizenship, the citizenship of India. In these days of provincialism, when every province likes to thrive at the cost of its neighbouring ones, when we have forfeited the sympathy and goodwill of our neighbouring provinces, it is indeed a great re-assuring feature. I, as a member from West Bengal, especially find myself elated to think that henceforth when this constitution is passed, when this clause of single citizenship, with its equal rights and privileges all over India, is passed, the door of our neighbouring provinces will be open to us, so that our unfortunate brethern from the Eastern Pakistan, will find a breathing space in our neighbouring provinces.

I beg to mention another point regarding the minority problem. The safeguards that have been awarded to the minorities in the draft Constitution, have caused some amount of resentment. Nobody can deny that minorities do exist in this country. No amount of denial can efface these minorities from the face of India. You know Sir, that democracy means rule by majority. The majority is always there to rule and the minority will always be there at the mercy of the majority. The majority has no need to be afraid of these minorities. It be hoves the majority, I think, to protect these minorities, and give them safeguards, if necessary, so that a sense of confidence, a sense of security may be created in their hearts. I think, what the minorities of India demand and deserve today, from the majority, is a sympathetic consideration of their problems and not a challenging attitude.

One very pertinent question has been raised by an eminent member of this House, Sir, when he said that the Draft Constitution of India has borrowed many things from the Constitutions of other countries of the world, but it has taken nothing from the indigenous soil, from our cultural heritage, evidently meaning the Village Panchayat System. We, as a sentimental and idealist race have a natural tendency and love for everything that is old and past. Our Chairman of the Drafting Committee has been criticised by various personages of this House, for not including this Village Panchayat System into the Draft Constitution. They have taken it for granted that this Constitution has been the work of a single man, forgetting that there was a Constitution-making body, the Drafting Committee, always to guide the framing of

[Dr. Monomohan Das]

Constitutions. I think, it is strange, Sir, that all the members of the Drafting Committee including the Chairman have forgotten to include this Village Panchayat System into our Constitution. The Village Panchayat System has been a blind spot to all of them. I personally think the Drafting Committee has wilfully left it to the provincial legislatures to frame whatever they like about this Village Panchayat System.

In fact, Sir, there are provinces in which legislation has already been undertaken in that direction, I mean, Sir, the Gram Panchayat Bill of the United Provinces. There is nothing in our Constitution that will take from the provincial legislatures the power to pass an Act in that direction. If our provincial legislatures think that this Village Panchayat System will do immense good to our country, they are quite at liberty to introduce it in their legislatures and pass it accordingly. So I think, Sir, the criticisms sometimes amounting to abuse, which have been showered upon the Chairman of the Drafting Committee, are wholly uncalled for, unjustifiable, uncharitable, and if I am permitted to say so, undignified.

I beg to utter a few words of caution to all Honourable friends who are so enthusiastic protagonists of the Village Panchayat System. Unless and until our village peoples are educated, unless and until they become politically conscious unless they become conscious of their civic rights and responsibilities, and unless they become conscious of their rights and privileges, this Village Panchayat system will do more harm than good. I know that I am inviting severe criticism upon myself when I say that the Village Panchayat System has been there and was there for centuries and centuries. How much has it contributed to the welfare of our country, how much has it contributed to our social, political and economic uplift? If this system is introduced before our village people are properly educated, then I think, Sir, the local influential classes will absorb to themselves all the powers and privileges that will be given by the Panchayat System and they will utilise it for their selfish motives. This system will enable the village zamindars, the village talukdars, the Mahajans and the money-lending classes to rob, to exploit the less cultured, the less educated, poorer classes of the villages.

With these words, Sir, I endorse wholeheartedly the motion put forward by the Chairman of the Drafting Committee for consideration of the Draft Constitution. I thank you, Sir, for the opportunity you have given me to express my views on the floor of this House.

Shri V. I. Muniswamy Pillai (Madras : General): Mr. Vice-President, Sir, nobody in this august Assembly or outside can belittle the efforts and the services rendered by the Drafting Committee that has presented the Draft Constitution for the approval of this House. The future generation will feel great pride that this Drafting Committee has been able to digest the various constitutions that are obtaining in the world today and to cull from them such of the provisions as are needed for the elevation of this great sub-continent.

Sir, going through the various sections, one has to note whether the underdog, the common man, the communities that have been neglected in the past, have been well protected, and facilities for citizenship have been afforded. Reading this constitution, one finds that there are two novel things that are not obtaining in any of the constitutions of the world: first of all, the eradication of untouchability. As a member of the so-called Harijan community, I welcome it. Untouchability has eaten into the vitals of the nation, and with all the pride and privilege of the Hindu community, the outside world have been looking at India with a doubtful eye. I welcome this provision because it shows the greatness of the majority community that they found out that there is a

fungus that is eating into nation's pride and they have come forward to remove this curse of untouchability. There are people in India today who say that enough propaganda has been made to eradicate untouchability and there is no need for further propaganda. But I honestly feel, Sir, if you go to the village parts, untouchability is rampant still and a provision of this sort in the Constitution is a welcome thing.

The second feature is the abolition of forced labour (*begar*). If there is any labour required for common purposes in the village, this most unfortunate fellow, the Harijan, is always caught hold of to do all menial and inferior service. By the provisions in this Constitution, I am sure you are elevating a community that has been outside the pale of society. It was given to the great Father of the Nation, Mahatma Gandhi, as a great mycologist, to find out the fungi that were eating into the national vitality. He has made certain proposals to eradicate this evil and I am glad that the Drafting Committee have made provisions to eradicate untouchability and forced labour on this unfortunate community.

Sir, in the Draft Constitution, they have stated that the eradication of untouchability can be made by laws. I plead that mere laws are not enough. Special laws have to be made. In my own province the legislature was good enough to pass an Act to remove the civil disabilities; but in putting the Act into operation, it was not possible even for the Government to enforce the facilities that were sought to be conferred by the Act. Therefore, I plead that there ought to be special laws if you really want to do away with untouchability and forced labour.

Coming to the Fundamental Rights that have been accorded to all in this country, and especially for the unfortunate minority communities, the Advisory Committee, the Minorities Committee and the Fundamental Rights Committee that went through the whole thing have adopted certain methods and they have been approved by this august Assembly.

There are certain sections of people who say that no reservation is required. But, all those, who have seen the unfortunate plight of these minority communities, feel that reservation must be there, as already accepted by the Minorities Committee and also approved by this august Assembly. So far as the protection of the minorities are concerned, it is the good-will of this august Assembly to confer adult franchise with joint electorates. Of course, no one can deny that this is the best thing that could be done in the circumstances to elevate this community, that is poor in economic status and also poor in education. Any attempt to do away with adult franchise will be a great sin. In the matter of safeguard to the minorities, I think what is now provided in the Draft Constitution is a welcome thing; but there is still in the provinces a strong feeling against these safeguards. I honestly feel that they must be enforced in all ways.

Coming to the economic condition of the villagers, especially the tillers of the soil and agricultural labour, I do not find any provision has been made in the Draft Constitution to consider the village as a unit. Of course, due to exploitation and other things, the villages are in rack and ruin. It is the highest duty of any constitution-making body to see that the village is set right. Due to the hereditary system of appointment of village officers, Maniagars and Karnams, they are the people who rule the villages. Having made a constitution for the upper strata for the management of the provinces of India, if we leave alone the village re-construction, I feel that we are doing a wrong thing. It is the wish of Mahatma Gandhi also that the village must be made a self-governing unit. I am sure this august Assembly will reconsider what has been presented to this House and see that we make proper amendments so that the village or a group of villages could come under the category of self-governing

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institutions. Whether in the District Boards or Municipalities, there are no real representatives of the people of the village or the taluk. Due to certain circumstances the Collectors in my province are asked to look after the District Board administration. These Collectors are loaded with so much other responsible work that they appoint a Special officer to carry on the District Board administration. This is not a popular institution as it is now constituted. I feel that the village unit must be taken into account.

In the matter of appointment of Ministers, the President is given full powers. If you read the provisions of the Government of India Act, 1935, you will find that provision has been made that the Governor or the President, in choosing his Ministers, shall take into account the claims of the minority communities. I find no such provision in this Draft Constitution. I am sure in the further deliberations over this Draft Constitution, some such provision will be made to take into account claims of the minority communities for these Ministers' posts. Sir, I believe that it is political power that can give a chance of better service to these neglected communities. Even in the matter of All India Services, in section 10 it is said that the backward communities are to be taken not of. But, if you persue the list of backward communities from province to province, the Scheduled Castes do not come in it. I feel that also must be rectified.

Finally, there is the controversy about the national language. Taking my own community, I do not think that even one per cent of the population have taken to Hindi or Hindustani.

I feel, Sir, that this august body must deliberate properly and should not force any language on a province, or district or state where it is not welcomed.

With these few observations, I congratulate the President and members of the Drafting Committee for their great service in presenting the Draft Constitution to this Assembly and I commend the motion to this House for its acceptance.

Shrimati Dakshayani Velayudhan (Madras : General): Mr. Vice-President, Sir, now that the draft is before us for general discussion, I request you to permit me to express my views on the same. The able and eloquent Chairman of the drafting Committee has done his duty creditably within the scope of the general set-up of the new State of India. I feel that even if he wanted he could not have gone beyond the broad principles under which transfer of power took place and I therefore think that any criticism that is levelled against him is totally uncharitable and undeserved. Even if there is any blame—and I think there is—it should go only to those of us who are present here and who were sent for the purpose of framing a Constitution and on whom responsibilities were conferred by the dumb millions of this land who by virtue of their suffering for independence had great hopes when they sent us to this Assembly. But this does not mean that I have not got any criticism about the Draft. I fear that the Constituent Assembly from the very beginning of its formation showed more interest in things other than making a constitution. We hear daily speeches made by our great leaders and their ideals and principles but in the Constitution we find that it is barren of their ideas and principles. We have got leaders of national and international importance but in our Constitution we find that those principles and ideals are absent and it is a great tragedy to find that such a draft has been placed before us and I do not think even the members of the drafting Committee have completely read the Draft that is placed before us.

The general criticism is that the draft is a replica of the 1935 Act, but we cannot forget the fact that we have got a legacy of the British Imperialist ad-

administration which goes by the name of the Parliamentary system of Government. The trouble was that we were depending on it and we will have to depend on it even after the Constitution is put into operation. The trouble arose from one point, *viz*., just as the British administrators who wanted to keep India centrally and provincially as a single unit, we in our bewilderment and anxiety tried to bring India centrally and provincially as a strong unit and this centralisation of power has led to all the troubles. There are two ways of making India a strong unit. One is by the method of centralisation of power and the other is by decentralisation; but centralisation is possible only through parliamentary system which now goes under the safe words 'democratic methods', but in this draft we can't find anything that is democratic and decentralisation is totally absent. It is a great tragedy that in making the constitution of a great country with thirty crores of people, with a great culture behind it and the great principles and teachings of the greatest man of the world on the surface, we were only able to produce a constitution that is totally foreign to us. The arguments put forward by the Chairman of the Drafting Committee are not at all convincing. He has said that we are very late in making the Draft Constitution. But I can cite examples which will show that his arguments are not sound. The Drafting Committee recommends that the President of the Union can nominate fifteen members to the Council of States. Then another plea is that the term of the legislature should be more than four years. There is another misnomer in the Draft and that is about the selection or the election of the Governors. The Committee feels that if the Governor and the Chief Minister who is responsible to the Legislature are elected by the people then there will be friction between the two. But the remedy they have suggested is worse than the disease. There is a panel and the President is to select from the four one person as a Governor. If the Centre happens to have a Congress President and if a province is having a Socialist majority, suppose the Socialist party recommends three from their party and one from the Congress, certainly the President at the Centre will select the Congress man to be the Governor. Certainly this will lead to friction. We find that this direct recruitment to Governorship is taken from the Government of India Act and it shows that we have not left out even a comma from it.

Then, Sir, I cannot understand why there should be Centrally Administered areas under the new Constitution. The British kept these areas simply to have the military rule in the country. But I do not understand why we should have such areas under the present Constitution. It is better that these provinces are merged with the adjoining provinces and thus we will not be losing anything. We find that the draftsmen included such a clause and as a result it has come before us for discussion.

Then I want to say a few words about the Socialist demand at this stage. The Socialists are the second party which wants to come as an Opposition to the official bloc. We cannot deny the large following that they are having in the country. They have declared that they want to be a Constitutional Opposition in the future. But I must say that I do not agree with their demand that this Constituent Assembly should be buried. I have to make one suggestion. The present Constitution, when it comes into force, will be put before the public by way of the General Elections. Then this Constitution can be made an election issue either for its acceptance or rejection. If the majority of the electorates accept the Constitution, then we can take it that the whole country has accepted it. If the majority of the electorates reject it then we must take it that the whole country has rejected it, and the party that comes into power, and the Legislature that will be formed thereafter, can take up the Constitution and make the amendments that are necessary. I think, Sir, the Congress Party that is in power today will accept such a policy and see

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that we are not blamed for being undemocratic in our approach to Constitution making.

Shri Deshbandhu Gupta (Delhi): *[Mr. President I am sorry I cannot congratulate Dr. Ambedkar, the Chairman of the Drafting Committee who has received congratulations from different Members of the House. I have read that part of the recommendations of the Drafting Committee which relates to the Chief Commissioners' Provinces, with great care. I would like to confine my remarks to this part only and wish that the Members of this House should go through it minutely.

Mr. President, you are aware that previously when the problem of Chief Commissioners' provinces was brought before the Constituent Assembly, the recommendations of the Drafting Committee were that the system of governance should remain the same as is now in force. Hindustan is changed, the country is free, but Delhi and other Chief Commissioners' provinces, in spite of their considerable population, did not have any say in the administration. There was no change in the system of their governance. When such a recommendation was brought before us in the Constituent Assembly, the representatives of the Chief Commissioners' provinces raised their voice and the Constituent Assembly appointed a special sub-Committee, which was entrusted with the task of framing a constitution in accord with the conditions prevailing there. Mr. President, the Chairman of this special Sub-Committee was Dr. Pattabhi Sitaramayya, the President-elect of our present National Congress and a senior member of this House. This special Sub-Committee had obtained the services of our constitutional "Pandit" Shri N. Gopalaswami Ayyangar. Moreover, our another Constitutional "Pandit", Shri K. Santhanam was also one of its members who always took a keen interest in it (*laughter*). (Do you doubt it)? Every member of the committee took interest in it and the recommendations which they submitted were unanimous. This committee held several meetings, considered the whole problem, examined all the sides of the question minutely and it also considered those difficulties of the Government, due to which they had deemed it proper to treat the Chief Commissioners' Provinces with indifference. Accordingly, taking all the matters into consideration, recommendations were submitted in which it was clearly stated that although the people of these areas demand that they should have the same rights as the people of the other provinces have already got — and there is no reason why this should not be—yet, considering that Delhi has a peculiar position of its own, they have recommended that Delhi and other similar provinces should be turned into Lieutenant-Governors' Provinces; and as regards the appointment of a Lieutenant-Governor it was conceded that the Centre should have control over him. Accordingly, it was resolved that instead of electing the Governor the President of the Republic should nominate him.

Another safeguard which has been provided is that, unlike other provinces, the constitution of the provinces should be framed differently and in such a manner that the provincial and central list should be concurrent, so that the Centre should have the full power to interfere in any legislation it likes which has been passed by the provincial Legislature. Moreover, the province should not have its exclusive jurisdiction.

It also has been provided that its budget should be brought before the Centre and that the President should have the right to interfere in it. This is not all. There is yet another safeguard, which says that should any difference arise between the Lieutenant-Governor and the Ministers on any matter it would be referred to the President whose decision on the subject would be

* [ ] Translation of Hindustani Speech.

taken as final. I fail to understand why the Drafting Committee deemed it necessary to dismiss this question in a few lines on the plea that as Delhi is the Capital town, local administration was not possible—although the Committee had submitted its recommendations after mature consideration in which maximum regard was paid to the powers of the Centre. It seems to me that the Drafting Committee, instead of paying due regard to the unanimous recommendations of the special committee or trying to find any other way out, has acted according to its prejudices and thought that it was not a matter to which consideration should be given. It seems to me that these gentlemen were under the impression that the special Committee was appointed merely to console the people of Delhi and other Chief Commissioners' provinces. That is why its recommendations have been thrown into the waste paper basket. I would like to ask them, why did they not realise that so many Members of the Constituent Assembly who spend considerable time in Delhi have certainly thought it proper that Delhi's population of 20 lakhs should have a say in their own administration? Does it look nice that in case there is a partial strike in Delhi, the Home Minister and the Prime Minister should run about to stop it? Is it proper that even under the new system of administration the cabinet ministers should be called upon to settle even the petty affairs of Delhi and the people of Delhi should have no voice? It is said that there being no parallel in Australia, it could not be done also here in India. I should have thought that we should try to benefit by the constitution of other countries and should not merely copy word by word. The example of Australia has been cited, but the population of its Capital town was 8000, and the estimate of its population in 1944 was 12,000. Its population is less than that of Narela, a town near Delhi. If you want to follow the example of Australia, then by all means make Narela your capital and exercise your authority there. The people of Delhi will have no objection. Another example which has been cited is that of Washington. This example can hold good to a certain extent. But I think that Delhi and Washington cannot be weighed in the same scale. Delhi is a commercial and an industrial town and it has a population of 20 lakhs whereas the population of Washington is near about 8 lakhs. Washington has been specially built to serve the purpose of a capital. Delhi has been in existence for centuries, nay for thousands of years. It has a culture of its own and its population has its own requirements.

To my mind, great injustice is being done to the citizens of Delhi by dismissing the whole question in few lines by saying that, as it is not done in United States and in Australia, therefore nothing can be done likewise in Delhi. I would like to ask whether it is not a fact that Moscow has a separate province and a provincial administration of its own. If Moscow, being the Capital of U.S.S.R. can have a separate administration, why can't Delhi have one? Is it not a fact that there are four separate provinces in the Union of South Africa? And is it not a fact that even there, the capital city is also the capital of a province? Then why cannot it be done in India? Only two examples have been cited before us and of these two, one is that of a place where the population is 8000. I would like to ask with greatest respect: what comparison could there be between the capital of Australia and Delhi? Is it not an injustice that the case of Delhi be dismissed in a minute by comparing it with a town having a population of 8000?

I would like to say in all humility that if this Constituent Assembly, which is representative of the people, does not lend its ear to the voice of the people, then they will have to adopt some other method for making their voice heard by the members. Since 1927 from every nook and corner of Delhi the cry is being raised that Delhi should have a separate administration of its own; even today a resolution to the effect has been passed by the Delhi Provincial Congress Committee. A similar resolution has also been passed at a provincial

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political conference. Chief Commissioner's Advisory Council and the Delhi Municipal Committee have adopted similar resolutions. Similar resolutions have been passed in hundreds of meetings but the members of our Drafting Committee have completely ignored that; they have not cared to take note of that at all. I think it is a grave injustice. There can be no greater injustice that the residents of Delhi, which is the heart of India, be denied a share in its administration. It is said that this demand is being put forth as some Delhi-wallas are hankering for Governorship and Ministership. I ask my worthy friend that while he poses to be the standard-bearer of the minority-rights—Dr. Ambedkar's attentive eye at once catches even the minutest point, if any, concerning the minorities—how did the claim of this small province escape his notice? He should have shown some consideration to Delhi, regarding it at least as a minorities province. Even today when it concerns a religious minority, which is only 30 to 35 lakhs, the question is brought before the Constituent Assembly. It draws the attention of all of our leaders and they do their utmost to find a solution, but nobody today pays any heed to the Delhi province. Is it not an injustice to ignore the demand of twenty lakhs of people and to regard the twenty-lakh population as insignificant? Today about six lakhs of our brethren have come down to Delhi from West Punjab after losing their all. Delhi has given them shelter and made them its own. I want to know whether this Constituent Assembly wants to penalise doubly these six lakhs of people by denying them franchise? That would be a great injustice. If you think that Delhi, being the capital, needs more of protection then you can certainly give it. Delhi-wallas are prepared for that service. In the recommendation, which we have placed before you, we have ourselves conceded wide powers. What do you then lose by giving to Delhi a small Legislative Council and a few ministers? You will have full freedom to suspend the whole thing whenever you like. The special Committee have themselves given all these powers to the President. Even here, instead of giving this a trial which would be a step in the right direction, we are told that there is no necessity of giving it a trial, and the President is vested with powers to take any such action, if and when he thought fit. On top of it all, it is made out that this is the only comprehensive solution of this problem. Mr. President, through you, I entreat the Honourable members of this House to ponder over this question calmly and to realise that the feeling of the people of Delhi is very strong and that their demand and their grievance is quite justified.

The same may be said about Ajmer-Merwara and Coorg; but as most probably they may amalgamate themselves with their neighbouring states they may thus acquire all the rights enjoyable by an autonomous province; but as regards Delhi it is being ordained that there would be no change in its status. Previously, Delhi's population was about six lakhs. Its present population is near about twenty lakhs, and it is estimated that within the next decade it would increase by another ten or fifteen lakhs. It is the fourth biggest town of India and its people have no voice in its administration. What is the state of affairs today? Delhi's Administrative report does not come before us. We are told that a Chief Commissioner's Advisory Council has been provided and we must be content with that. So, listen a bit about that also. It is more than a year that it was set up but not even once during all this period has the Chief Commissioner thought it necessary to consult the members of his Advisory Council on any matter of day-to-day administration so far. When riots broke out in Delhi, an emergency committee under the Chairmanship of Mr. Bhabha was set up by the Central Cabinet. But Delhi's Advisory Council had no hand in it. I want to know that if some sort of misfortune or devastation be falls Delhi today, or some sort of difficulties are

created by the people of Delhi, then would it not affect us? How could it be therefore that the people of Delhi are not to be given any voice in its administration? New townships are being built around Delhi; new schemes are being planned, but nobody consults the people of Delhi. There is no place for them. For trivial matters they have to go to the Prime Minister or to the other Ministers. If Bombayites are capable of self-government, if Calcutta people are capable of running a government, and if U. P. with a population of five crores can run its government, than the same right should be given to the people of Delhi so that they may run the administration of Delhi province. The people of Delhi have never lagged behind during the hour of trial; their part in the struggle for freedom has been no less than that of others. In spite of all this, it is stated that no rights can be given to the Chief Commissioners' provinces of Delhi and Ajmer-Marwara. I want to emphasize that this question cannot be settled so easily.

Sir, I being the only member here for Delhi, my voice is feeble; I get little opportunity to make known to this House the aspirations of the people of Delhi. Today, with the great difficulty I have got this opportunity to put their case before this House; who cares for a cry in the wilderness? The most potent argument that I can place before you is that whatever safeguards you think proper, you may take. We shall have no objection to that, but the local administration should be entrusted to the people of Delhi. Delhi's status should be similar to that of other provinces. If you do not concede this right to them, it would be a grave injustice. The consequences will not be good.]

Shri Gokulbhai Daulatram Bhatt (Bombay States): *[Mr. President, The minorities are being afforded an opportunity today to speak to the motion. I am, however, from the Native States. But these States are as yet political minors though they are gradually moving forward to attain the age of political majority. I am specially here to demand that we, who have reached this fulness of political age, should be recognised to have attained it, notwithstanding those who would like to deny us this right. The fact is that our States and Unions of States are similar in character to the other provinces. I believe that I have been afforded this opportunity on this very ground and I only say that it was for this very purpose that I had agreed to it and I thank you, Sir, for affording this opportunity to me. Since the draft of the constitution reached me I have been carefully scrutinising it. I may therefore say that it is not that I have begun its scrutiny only a few days back. But from the day I began to examine it I have felt that there is nothing in it which may be said to be proper and right. I admit that it is quite proper to borrow, in a written constitution, such provisions from constitutions of other countries as may be considered obviously very good and useful. But the bold and authoritative statement of the Chairman of the Drafting Committee that the constitution we are going to accept would be the best in the world should be taken with some reservation. He says so because he is one of those who have prepared this draft—and I admit that they are entitled to gratitude on our part for the pains they have taken and the labours they have put in, borrowing parts from the constitutions of innumerable countries. Of course, it is not that these parts are disparate nor do I suggest that they have strung up a remarkable frame of unharmonious parts gathered from here and there. No, I would not like to make such an observation, for I do not think that the disparity within its various parts is to such an extent as would justify such a sentiment. But I would say that even in the buildings of Delhi, the city where we are meeting today and of which Shri Deshbandhuji has been telling us just now and which I agree should be given a separate status of its own

* [ ] Translation of Hindustani Speech.

[Shri Gokulbhai Daulatram Bhatt]

in the buildings of Delhi, for example, in a building like the Governor General's House there are to be found traces of ancient architecture just as much as there are those of modern architecture. Similarly I concede that good provisions of the constitutions of other countries may be included in our Constitution. But I feel pained today, as I did even before, that in our eagerness to borrow from other countries we have totally neglected those ancient principles and institutions of our country which are there even today and which we have inherited in our blood. It is a draft of the Constitution but neither its guiding principles nor its body are vitalised by the heart of India. The truth is that it does not give us the sense of being our own. This draft is no doubt beautifully decorated and decorated with flowers and other attractive articles. But the fragrance which such a constitution should give out is not there. I do not suggest that the labours of the Committee were a mere waste of energy and time, but I beg to be excused if I do wonder why so many months were spent on it when the constitution to be framed was to be only of this nature. I do not deny that there are some good features in it and I extend my congratulations to them for the same; but considering it as a whole I doubt seriously if it can at all be considered a constitution which is Indian in spirit and in character.

Dr. Ambedkar boldly admitted, and the members of the Drafting Committee do concede that in this constitution there is no provision for establishing Panchayat Raj, the village Panchayati system in India. When there is no such provision, it can never be the constitution of India. To forget or spurn the system of village Panchayats, which has lifted us up and which has sustained us so far and to declare boldly that it has been deliberately spurned—well in all humility I lodge my protest against it. They admit that they have spurned it and have not included it in our Constitution. He has said so and that too with great emphasis. I am pained at the fact that the Chairman of our Drafting Committee has used the words, "what is the village but a sink of localism and a den of ignorance... I am glad that the Draft Constitution has discarded the village..." I was grieved to find that our great Pandit with all his knowledge of Sanskrit and politics, has opposed the system of village Panchayats in this way. If the village is to be discarded, someone can also boldly demand that this constitution be discarded. But I am a humble person and do not have much experience either. Occasionally I am led by sentiment also to make an observation. But in all circumstances an attempt should be made to include in some form, by the amendments we intend to bring forward, that democracy should be the foundation of our polity. Then alone can our Constitution be complete, then alone will it have life and then alone will we have the feeling that this constitution is our own. Otherwise we would be rearing this great building on a foundation of sand and it will surely fall down. This is what I particularly want to suggest and that was why I wanted to speak.

Another matter to which I want to draw your attention is that some of our States have joined together to form a number of unions. It is a matter of great satisfaction that our able leader Sardar Patel has changed the very face of the States with great speed and I am proud of it. Now, the constitution will be completed, I admit by the end of December or in January next. But several States have and desire to continue to have a separate existence of their own. It must be said that if the province of Orissa can have a separate existence, several states such as Travancore, Cochin, Jaipur, Jodhpur etc., can also maintain their separate existence. But I humbly submit that if we form such small provinces, we will find ourselves in the grip of much worse provincialism than we have today and all our unity will be shattered. The result will be that we will not be as strong as we are to-

day. I would say that the States and provinces should be so big and so well administered as to be able to stand on their own legs. A Revenue of six crores or seven crores or eight crores is not sufficient. No large province can pull on with this revenue. In my opinion, no such province should be formed as may have a smaller revenue than twenty to twenty five crores; nor in my opinion should there be formed any Union of States which does not have that much revenue. But this is a matter which requires consideration, special consideration, by our leaders. I come from Rajputana and from a small State. Even though I admit that the rulers have made great sacrifices and may also praise their self-surrender. Yet I wonder how long can Bhopal be permitted to maintain, as it is doing today, a separate existence from Madhya Bharat, how long Benares and Rampur can be permitted to have their separate existence and Jodhpur and Bikaner, in our parts, can be permitted to remain separate autonomous identities. When India is going to be divided into various provinces—and of course they should be big ones—I think the rulers, rulers of big States, should come forward and on the basis of the mutual understanding merge their States into sufficiently big units. If, for example, Rajputana is formed into a unit by itself the question of Ajmer and Merwara will naturally be solved for there would be no reason to continue its separate existence as it is but a small province. It is a part of Rajputana and should be naturally merged therein. Rulers may be given high officers in order to keep up their dignity. The offices of Rajpramukh and Up-Rajpramukh are already there. Besides these, there are many other offices in India which should be given to rulers because we respect them. So far as the States are concerned, we would not in any circumstances like to lag behind the provinces, nor would it be proper to keep them behind the Provinces. If it be said for any reason that we have acceded only in a few subjects, I would say that this need not be so. We do say that our status should be improved because you are kind to us and want to lead us forward. We would not like to be put on any other footing than that of the other provinces. Our status should be the same as of provinces in all matters, be they relating to High Court or Supreme Court. I am sure you will help us in the matter. We shall ask our leaders to help us, to lead us forward and give us the same place that the provinces have.

I shall not speak much because many friends have already put many of these facts before you. But I do like to submit that in regard to the formation of small provinces on linguistic basis I hold a different view. It is my opinion that under the existing conditions in India we should not even think of this for at least the next ten years. I would submit earnestly to my friends to postpone for the present the issue of the Linguistic Provinces for the sake of the unity that we are seeking to establish and for the sake of the powerful nation we are trying to build up now. We shall think over the question after ten years when things have settled down.

This is what I wanted to say. As far as Delhi and other places are concerned. I would like to urge that we should take into consideration the fact that Delhi is the Capital and that as such it must be given a distinct status. I am one with Lala Deshbandhu Gupta on this question. But the small regions like Ajmer-Merwara, Coorg, Pantpiploda etc. should be merged in the provinces. It is no use making them centrally administered areas. This much I would like to submit to Doctor Sahib. He is a great scholar, and as such he should treat this country also as a land of wisdom. It is my appeal to him that he should give a place to the soul of India in this constitution.]

The Honourable Pandit Jawaharlal Nehru: (United Provinces : General) (Rising amidst cheers) Mr. Vice-President. Sir, we are on the last lap of our long journey. Nearly two years ago, we met in this hall and

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on that solemn occasion it was my high privilege to move a Resolution which has come to be known as the Objectives Resolution. That is rather a prosaic description of that Resolution because it embodied something more than mere objectives, although objectives are big things in the life of a nation. It tried to embody, in so far as it is possible in cold print to embody, the spirit that lay behind the Indian people at the time. It is difficult to maintain the spirit of a nation or a people at a high level all the time and I do not know if we have succeeded in doing that. Nevertheless I hope that it is in that spirit that we have to approach the framing of this constitution and it is in that spirit that we shall consider it in detail, always using that Objectives Resolution as the yard measure with which to test every clause and phrase in this Constitution. It may be, of course, that we can improve even on that Resolution; if so, certainly we should do it, but I think that Resolution in some of its clauses laid down the fundamental and basic content of what our Constitution should be. The Constitution is after all some kind of legal body given to the ways of Governments and the life of a people. A Constitution if it is out of touch with the people's life aims and aspirations, becomes rather empty: if it falls behind those aims, it drags the people down. It should be something ahead to keep people's eyes and minds up to a certain high mark. I think that the Objectives Resolution did that. Inevitably since then in the course of numerous discussions, passions were roused about what I would beg to say are relatively unimportant matters in this larger context of giving shape to a nation's aspirations and will. Not that they were unimportant, because each thing in a nation's life is important, but still there is a question of priority there is a question of relative importance, there is a question also of what comes first and what comes second. After all there may be many truths, but it is important to know what is the first truth. It is important to know what in a particular context of events is the first thing to be done, to be thought of and to be put down, and it is the test of a nation and a people to be able to distinguish between the first things and the second things. If we put the second things first, then inevitably the first and the most important things suffer a certain eclipse.

Now I have ventured with your permission, Sir, to take part in this initial debate on this Draft Constitution, but it is not my intention to deal with any particular part of it, either in commendation of it or in criticism, because a great deal of that kind has already been said and will no doubt be said. But in view of that perhaps I could make some useful contribution to this debate by drawing attention to certain fundamental factors again. I had thought that I could do this even more because in recent days and weeks. I have been beyond the shores of India, have visited foreign lands, met eminent people and statesmen of other countries and had the advantage of looking at this beloved country of our from a distance. That is some advantage. It is true that those who look from a distance do not see many things that exist in this country. But it is equally true that those who live in this country and are surrounded all the time with our numerous difficulties and problems sometimes may fail to see the picture as a whole. We have to do both; to see our problems in their intricate detail in order to understand them and also to see them in some perspective so that we may have that picture as a whole before our eyes.

Now this becomes even more important during a period of swift transition such as we have gone through. We who have lived through this period of transition with all its triumphs and glories and sorrows and bitterness, we are affected by all these changes; we are changing ourselves; we do not notice ourselves changing or the country changing so much and it is a little helpful to be out of this turmoil for a while and to look at it from a distance and to look at it also to some extent with the eyes of other people. I have had

that opportunity given to me. I am glad of that opportunity, because for the moment I was rid of the tremendous burden of responsibility which all of us carried and which in a measure some of us who have to shoulder the burden of Government have to carry more. For a moment I was rid of those immediate responsibilities and with a mind somewhat free, I could look at that picture and I saw from that distance the rising Star of India far above the horizon (*hear, hear*) and casting its soothing light, in spite of all that has happened, over many countries of the world, who looked up to it with hope, who considered that out of this new Free India would come various forces which would help Asia, which would help the world somewhat to right itself, which would co-operate with other similar forces elsewhere, because the world is in a bad way, because this great continent of Asia or Europe and the rest of the world are in a bad way and are faced with problems which might almost appear to be insurmountable. And sometimes one has the feeling as if we were all actors in some terrible Greek tragedy which was moving on to its inevitable climax of disaster. Yet when I looked at this picture again from a far and from here, I had a feeling of hope and optimism not merely because of India, but because also of other things that I saw that the tragedy which seemed inevitable was not necessarily inevitable, that there were many other forces at work, that there were innumerable men and women of goodwill in the world who wanted to avoid this disaster and tragedy, and there was certainly a possibility that they will succeed in avoiding it.

But to come back to India, we have, ever since I moved this Objectives Resolution before this House—a year and eleven months ago, almost exactly—passed through strange transitions and changes. We function here far more independently than we did at that time. We function as a sovereign independent nation, but we have also gone through a great deal of sorrow and bitter grief during this period and all of us have been powerfully affected by it. The country for which we were going to frame this Constitution was partitioned and split into two. And what happened afterwards is fresh in our minds and will remain fresh with all its horrors for a very long time to come. All that has happened, and yet, in spite of all this, India has grown in strength and in freedom, and undoubtedly this growth of India, this emergence of India as a free country, is one of the significant facts of this generation, significant for us and for the vast numbers of our brothers and sisters who live in this country, significant for Asia, and significant for the world, and the world is beginning to realise—chiefly I think and I am glad to find this—that India's role in Asia and the world will be a beneficent role; sometimes it may be with a measure of apprehension, because India may play some part which some people, some countries, with other interests may not particularly like. All that is happening, but the main thing is this great significant factor that India after a long period of being dominated over has emerged as a free sovereign democratic independent country, and that is a fact which changes and is changing history. How far it would change history will depend upon us, this House in the present and other Houses like this coming in the future who represent the organised will of the Indian people.

That is a tremendous responsibility. Freedom brings responsibility; of course there is no such thing as freedom without responsibility. Irresponsibility itself means lack of freedom. Therefore we have to be conscious of this tremendous burden of responsibility which freedom has brought: the discipline of freedom and the organised way of working freedom. But, there is something even more than that. The freedom that has come to India by virtue of many things, history, tradition, resources, our geographical position, our great potential and all that, inevitably leads India to play an important part in world affairs. It is not a question of our choosing this or that; it is an inevitable consequence of what India is and what a free India must be. And,

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because we have to play that inevitable part in world affairs, that brings another and greater responsibility. Sometimes, with all my hope and optimism and confidence in my nation, I rather quake at the great responsibilities that are being thrust upon us, and which we cannot escape. If we get tied up in our narrow controversies, we may forget it. Whether we forget it or not, that responsibility is there. If we forget it, we fail in that measure. Therefore, I would beg of this House to consider these great responsibilities that have been thrust upon India, and because we represent India in this as in many other spheres, on us in this House, and to work together in the framing of the Constitution or otherwise, always keeping that in view, because the eyes of the world are upon us and the hopes and aspirations of a great part of the world are also upon us. We dare not be little; if we do so, we do an ill-service to this country of ours and to those hopes and aspirations that surround us from other countries. It is in this way that I would like this House to consider this Constitution: first of all to keep the Objectives Resolution before us and to see how far we are going to act up to it, how far we are going to build up, as we said in that Resolution, "an Independent Sovereign Republic, wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of Government, are derived from the people, and wherein shall be guaranteed and secured to all of the people of India justice, social, economic and political; equality of status, of opportunity, and before the law; freedom of thought and expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and 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."

I read that last clause in particular because that brings to our mind India's duty to the world. I should like this House when it considers the various controversies—there are bound to be controversies and there should be controversies because we are a living and vital nation, and it is right that people should think differently and it is also right that, thinking differently when they come to decisions, they should act unitedly in furtherance of those decisions. There are various problems, some very important problems, on which there is very little controversy and we pass them—they are of the greatest importance—with a certain unanimity. There are other problems, important no doubt, possibly of a lesser importance, on which we spend a great deal of time and energy and passion also, and do not arrive at agreements in that spirit with which we should arrive at agreements. In the country today, reference has been made—I will mention one or two matters—to linguistic provinces and to the question of language in this Assembly and for the country. I do not propose to say much about these questions, except to say that it seems to me and it has long seemed to me inevitable that in India some kind of reorganization should take place of provinces, etc., to fit in more with the cultural, geographical and economic condition of the people and with their desires. We have long been committed to this. I do not think it is good enough just to say linguistic provinces; that is a major factor to be considered, no doubt. But there are more important factors to be considered, and you have therefore to consider the whole picture before you proceed to break up what we have got and re-fashion it into something new. What I would like to place before the House is that, important from the point of view of our future life and governance as this question is, I would not have thought that this was a question of that primary importance, which must be settled here and now today. It is eminently a question which should be settled in an atmosphere of good-will and calm and on a rather scholarly discussion of the various factors of the case. I find, unfortunately, it has raised a considerable degree of heat and passion and

when heat and passion are there, the mind is clouded. Therefore, I would beg of this House to take these matters into consideration when it thinks fit, and to treat it as a thing which should be settled not in a hurry when passions are roused, but at a suitable moment when the time is ripe for it.

The same argument, if I may say so, applies to this question of language. Now, it is an obvious thing and a vital thing that any country, much more so a free and independent country, must function in its own language. Unfortunately, the mere fact that I am speaking to this House in a foreign language and so many of our colleagues here have to address the House in a foreign language itself shows that something is lacking. It is lacking; let us recognise it; we shall get rid of that lacuna undoubtedly. But, if in trying to press for a change, an immediate change, we get wrapped up in numerous controversies and possibly even delay the whole Constitution, I submit to this House it is not a very wise step to take. Language is and has been a vital factor in an individual's and a nation's life and because it is vital, we have to give it every thought and consideration. Because it is vital, it is also an urgent matter; and because it is vital, it is also a matter in which urgency may ill-serve our purpose. There is a slight contradiction. Because, if we proceed in an urgent matter to impose something, may be by a majority, on an unwilling minority in parts of the country or even in this House, we do not really succeed in what we have started to achieve. Powerful forces are at work in the country which will inevitably lead to the substitution of the English language by an Indian language or Indian languages in so far as the different parts of the country are concerned; but there will always be one all-India language. Powerful forces are also working at the formation of that all-India Language. Language ultimately grows from the people; it is seldom that it can be imposed. Any attempt to impose a particular form of language on an unwilling people has usually met with the strongest opposition and has actually resulted in something the very reverse of what the promoters thought. I would beg this House to consider the fact and to realize, if it agrees with me, that the surest way of developing a natural all-India language is not so much to pass resolutions and laws on the subject but to work to that end in other ways. For my part I have a certain conception of what an all-India language should be. Other people's conception may not be quite the same as mine. I cannot impose my conception on this House or on the country just as any other person will not be able to impose his or her conception unless the country accepts it. But I would much rather avoid trying to impose my or anyone else's conception but to work to that end in co-operation and amity and see how, after we have settled these major things about the Constitution etc., after we have attained an even greater measure of stability, we can take up each one of these separate questions and dispose of them in a much better atmosphere.

The House will remember that when I brought that motion of the Objectives Resolution before this House, I referred to the fact that we were asking for or rather we were laying down that our Constitution should be framed for an Independent Sovereign Republic. I stated at that time and I have stated subsequently this business of our being a Republic is entirely a matter for us to determine of course, it has nothing or little to do with what relations we should have with other countries, notably the United Kingdom or the Commonwealth that used to be called the British Commonwealth of Nations. That was a question which had to be determined again by this House and by none else, independently of what our Constitution was going to be. I want to inform the House that in recent weeks when I was in the United Kingdom, whenever this subject or any allied subject came up for a private discussion—there was no public discussion or decision because the Commonwealth Conference which I attended did not consider it at all in its sessions—but inevitably

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there were private discussions, because it is a matter of high moment not only for us but for other countries as to what, if any, relation we should have, what contacts, what links we should bear with these other countries. Therefore the matter came up in private discussion. Inevitably the first thing that I had to say in all these discussions was this that I could not as an individual—even though I had been honored by this high office of Prime Ministership—I could not in any way or in any sense commit the country—even the Government which I have the honour to represent could not finally decide this matter. This was essentially a matter which the Constituent Assembly of India alone can decide. That I made perfectly clear. Having made that clear, I further pointed out that this Objectives Resolution of this Constituent Assembly. I said it is open of course to the Constituent Assembly to vary that Resolution as it can vary anything else because it is Sovereign in this and other matters. Nevertheless that was the direction which the Constituent Assembly gave to itself and to its Drafting Committee for Constitution, and so long as it remains as it is, and I added that so far as I knew it would remain as it is (*cheers*) — that Constitution would be in terms of that Objectives Resolution. Having made that clear, Sir, I said that it has often been said on our behalf that we desire to be associated in friendly relationship with other countries, with the United Kingdom and the Commonwealth. How in this context it can be done or it should be done is a matter for careful consideration and ultimate decision naturally on our part by the Constituent Assembly, on their part by their respective Governments or peoples. That is all I wish to say about this matter at this stage because possibly in the course of this session this matter no doubt will come up before the House in more concrete form. But in whatever form it may come up whether now or later, the point I should like to stress is this, that it is something apart from and in a sense independent of the Constitution that we are considering. We pass that Constitution for an Independent Sovereign Democratic India, for a Republic as we choose, and the second question is to be considered separately at whatever time it suits this House. It does not in any sense fetter this Constitution of ours or limit it because this Constitution coming from the people of India through their representatives represents their free will with regard to the future governance of India.

Now, may I beg again to repeat what I said earlier and that is this: that destiny has cast a certain role on this country. Whether anyone of us present here can be called men or women of destiny or not I do not know. That is a big word which does not apply to average human beings, but whether we are men or women of destiny or not, India is a country of destiny (*cheers*), and so far as we represent this great country with a great destiny stretching out in front of her, we also have to function as men and women of destiny, viewing all our problems in that long perspective of destiny and of the World and of Asia, never forgetting the great responsibility that freedom, that this great destiny of our country has cast upon us, not losing ourselves in petty controversies and debates which may be useful but which will in this context be either out of place or out of tune. Vast number of minds and eyes look in this direction. We have to remember them. Hundreds of millions of our own people look to us and hundreds of millions of others also look to us; and remember this, that while we want this Constitution to be as solid and as permanent a structure as we can make it, nevertheless there is no permanence in Constitutions. There should be a certain flexibility. If you make anything rigid and permanent, you stop a Nation's growth, the growth of a living vital organic people. Therefore it has to be flexible. So also, when you pass this Constitution you will, and I think it is proposed, lay down a period of years—whatever

that period may be—during which changes to that Constitution can be easily made without any difficult process. That is a very necessary proviso for a number of reasons. One is this: that while we, who are assembled in this House, undoubtedly represent the people of India, nevertheless I think it can be said, and truthfully, that when a new House, by whatever name it goes, is elected in terms of this Constitution, and every adult in India has the right to vote—man and woman—the House that emerges then will certainly be fully representative of every section of the Indian people. It is right that that House elected so—under this Constitution of course it will have the right to do any thing—should have an easy opportunity to make such changes as it wants to. But in any event, we should not make a Constitution such as some other great countries have, which are so rigid that they do not and cannot be adapted easily to changing condition. Today especially, when the world is in turmoil and we are passing through a very swift period of transition, what we may do today may not be wholly applicable tomorrow. Therefore, while we make a Constitution which is sound and as basic as we can, it should also be flexible and for a period we should be in a position to change it with relative facility.

May I say one word again about certain tendencies in the country which still think in terms of separatist existence or separate privileges and the like? This very Objectives Resolution set out adequate safeguards to be provided for minorities, for tribal areas, depressed and other backward classes. Of course that must be done, and it is the duty and responsibility of the majority to see that this is done and to see that they win over all minorities which may have suspicions against them, which may suffer from fear. It is right and important that we should raise the level of the backward groups in India and bring them up to the level of the rest. But it is not right that in trying to do this we create further barriers, or even keep on existing barriers, because the ultimate objective is not separatism but building up an organic nation, not necessarily a uniform nation because we have a varied culture, and in this country ways of living differ in various parts of the country, habits differ and cultural traditions differ. I have no grievance against that. Ultimately in the modern world there is a strong tendency for the prevailing culture to influence others. That may be a natural influence. But I think the glory of India has been the way in which it has managed to keep two things going at the same time: that is, its infinite variety and at the same time its unity in that variety. Both have to be kept, because if we have only variety, then that means separatism and going to pieces. If we seek to impose some kind of regimented unity that makes a living organism rather lifeless. Therefore, while it is our bounden duty to do everything we can give full opportunity to every minority or group and to raise every backward group or class, I do not think it will be a right thing to go the way this country has gone in the past by creating barriers and by calling for protection. As a matter of fact nothing can protect such a minority or a group less than a barrier which separates it from the majority. It makes it a permanently isolated group and it prevents it from any kind of tendency to bring it closer to the other groups in the country.

I trust, Sir, that what I have ventured to submit to the House will be borne in mind when these various clauses are considered and that ultimately we shall pass this Constitution in the spirit of the solemn moment when we started this great endeavour.

The Assembly then adjourned for Lunch till Three of the Clock.

The Constituent Assembly reassembled after lunch at Three of the Clock,

Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Giani Gurmukh Singh Musafir (East Punjab : Sikh): Mr. President, like my Honourable friend Shri Deshbandhu Gupta, I cannot say that Dr. Ambedkar, President of the Drafting Committee does not deserve any congratulation. On several matters he deserves congratulation for several reasons and the Committee's labour in framing this first constitution is certainly praise worthy. In spite of that, if anybody discovers any error, he mentions it, according to the measure of his understanding.

Now I want to say something regarding Article 5 which is embodied in the Part relating to the rights of citizenship. Some of my friends have already drawn our attention to the fact that it would be very difficult for illiterate people to appear before a magistrate for filing their declarations. But I look at it also from another point of view. From both points of view, some sort of amendment is essential, because in this Article no distinction has been made between a foreigner and the Hindus and the Sikhs coming from Pakistan. Those that are still perforce in Pakistan will have no right of acquiring citizenship after this constitution has been framed. I think this Article should be so amended that they might be regarded as the citizens of this land, whenever they come here. There is yet another point. Just at present non-Muslims are coming from East Bengal. If, therefore, any provision is made in this constitution to the effect that they would not be able to come, after this Constitution has been passed, then the process of their migration will gain momentum. We are not able to look fully well after the refugees who have come here already. From this point of view, too, I consider it expedient that suitable amendment should be made in this item.

Another point which I want to mention is regarding the Fundamental rights, namely the one which concerns our basic rights. They have been stated in grandiloquent style, but the many limitations made therein have lessened the grandiloquence. Seth Damodar Swarup had moved an amendment on behalf of his party, which was lost. The object of his amendment was to point out that Assembly which is not elected on the basis of joint electorate and adult franchise, is not representative of the masses; but we did not agree with him and the House rejected his amendment. But this much is very clear that although our Assembly was not elected on the basis of joint electorate and adult franchise. Yet this Constituent Assembly has to look to the interest of the masses at the time of framing the constitution. Articles 9 to 13, where the people's rights have been embodied, answer the objection raised by Seth Sahib. For instance, there is equality of right on the basis of religion, race or caste, meaning thereby that there shall be no discrimination on grounds of Caste. Untouchability is abolished. Freedom of speech is guaranteed and in awarding punishment, no discrimination shall be made on grounds of creed or caste. All these things have been incorporated and they are all very good; but I have objection against some of the limitations. For example, in Article 13, freedom of speech has been guaranteed, freedom of movement throughout the country without any distinction has been given and there is freedom to acquire and to dispose of property—all these things have been embodied. But the limitation imposed in item (5) of Article 13 should not have been there. In the face of these limitations, all these grand clauses which have been embodied in it will lose some of their grandeur. Even now I have this complaint anybody may admit it or not; but I strongly believe, that those of our brethren who have come from Pakistan—although in some places they have been treated well, yet distinction has certainly been made and their rehabilitation has not been liked. Wherever they have gone, difficulties have certainly been raised

in rehabilitating them freely and comfortably. Therefore from the point of view of refugee problem, too, there should not be any limitation regarding the freedom of movement throughout the country and of acquiring and disposing of property. Those who cannot acquire plots should have the liberty of acquiring cultivable lands. I have received telegrams from everywhere that this limitation should be done away with so that this old evil of disunion might disappear.

Third thing which I want to say is about the language. This is a very important question but I had not thought it to be so intricate as made out by our learned men and research scholars. Till the time this question had not come to me in its present form, I never thought there was any difference between Hindi and Hindustani. It never occurred to me that Hindi is a separate language from Hindustani. In this connection I recall a Panjabi couplet of my own which means "Ignorance was bliss to me; knowledge has landed me into a difficult situation" or, in other words, I wish I had not known about it; now when I have known it I am in a puzzle what to do. But one thing is quite clear. As a principle we should agree to keep only one script in our Constitution. There should be one script and one language for the whole of India, as has been stated by our friend Seth Govind Das Ji and several other speakers.

I also agree that our first constitution should be adopted in the National language. This is my firm faith and my confirmed opinion. So far as language is concerned, it undoubtedly varies from place to place; there is no doubt about it. There seems to be some difficulty about language question. Some Honourable members have gone to the extent of threatening that if a particular decision is taken they would stop attending the House or would have to take some steps as a protest. In our armed forces, Roman script, Urdu script as well as Devnagri script are prevalent. If we have to keep only one script than we ought to see in which of these three scripts all our languages can be written and reproduced correctly. I would go to this extent, that if all the advocates of provincial languages so agree, then I would be prepared for the position that Bengalis should leave their Bengali script, Tamilians and Telugus give up their scripts and Punjabis leave their Punjabi script and all these languages should be written in Devnagri script and I would have no objection. Under the present conditions however this seems to be somewhat difficult, though it would create a sense of oneness. If all of us differ in every other respect, at least we must be one in one respect. We must unite no one point, that is we must agree to have one common script, in which all different languages may be written. If it is done we shall be saved from several perplexities. In case this is not possible, then every provincial language must be given equal importance in that particular province.

Then remains the question of language; regarding that I want to say this that I have seen all the translations of this draft constitution. I have seen its Hindi translation, and have read its Urdu and Hindustani translations. I have used the word "seen" about Hindi translation for the reason that I have talked to several of my friends who are supporters of Hindi. None of them could explain the purport of the Hindi translation to me. Our great poet of Panjab Dr. Iqbal, used to write his poems in Persian. I have read several of his books in Persian but when he realised that his Persian poetry was like a wild flower for the people, out of which nobody got any fragrance, then he began writing in Urdu. If you see the language of his Urdu poems, you will find that he was obliged to use a simple diction so that his thoughts may reach the people. Just listen; I repeat one of his couplets to you : —

"Iqbal bara updeshak hai,
Man baton men moh leta hai,
Guftar ka woh ghazi to bana
Kirdar ka ghazi ban na saka."

[Giani Gurmukh Singh Musafir]

Now tell me what you will call this language—Hindi, Urdu or Hindustani? To which language do the words 'updeshak', Man', and 'Moh' belong? If the language in which my friend, Chaudhary Ranbir Singh, delivered his speech the other day, is Hindi then I am a supporter of Hindi. Now, we have to see what is most suitable and most practicable. If you ask me about the Punjab I can tell you that all those papers, which are supporters of Hindi, are printed in Urdu script. It is not a question of personal or individual convenience but of finding a most suitable and practicable solution.

So what I mean, is that our language should be easy and commonly understandable. I suggest that a committee be appointed for coining the terms, and after the terms have been coined and the simplification of language decided upon then I think there will be no difficulty in the way of solving the language question. There is a short-coming in us all and particularly in Punjabis, that we tend to give a religious tinge to every problem. We pitch ourselves against each other on the basis of religion. The matter may be simple but by giving it a religious colour we create a mess.

There is a talk of division of provinces on linguistic basis. On that point our constitution is almost silent; only a vague hint has been given. In the Punjab this question too has taken a religious turn although it is a very simple one. So, as was said by one speaker in the morning, it is a controversial matter. It should be postponed, and this principle should be accepted that if provinces are formed on a linguistic basis, then all the developed languages will be given due consideration.

My time is almost finished, but I want to say something about the minorities. I have not given much thought to this question because I have been a Congress worker. Even now I am the President of the Provincial Congress. To my mind, rights of the minorities will be quite safe in the hands of the Congress Governments. But at present the question of reservation is before us. This is true that on the basis of religion I belong to a minority community, and I am proud of the fact that I have never viewed this question from a communal angle. Regarding this, I would like to state that the Sikh community has always been proud of the fact that it has bravely made sacrifices in making the country a strong nation. That was the reason which prompted revered Pandit Malviyaji to remark that every Hindu family must have a Sikh son. Shri Savarkar had once advised the co-religionists of Dr. Ambedkar that if they wished to change their religion they could become Sikhs. I had then enquired from Shri Savarkarji as to how could he, being himself a Hindu and an Arya Samajist, give such advice? (A voice—Savarkar is not an Arya Samajist.) Then, I withdraw my words. Anyway, he replied to me that though he had not studied Sikhism, this much he knew that when he was at the Andamans there were several old and distinguished Sikh prisoners with him, in whom he had found intense patriotism, passion for national service and sacrifice in abundance. Judged from that he could say that they were good people and for that reason he had advised co-religionists of Dr. Ambedkar to embrace Sikhism. From the point of view of the minorities themselves, I venture to say that without weightage reservation is of no use. I think that if our hearts are freed from mutual suspicions and we gain each other's confidence then several provisions can be embodied which would help us in forging one nation. Governors and the President can be vested with the power of nomination in cases where minorities fail to secure their adequate place under election. If any such method is devised whereby reservation is done away with, then it would be a test of the majority also, as well as a step forward towards forging one nation. We have seen how the reservation and separate electorates have worked under the British regime; instead of becoming one nation, the country had been torn to pieces. This treatment simply aggravated the malady. We should take a

lesson from that; we should know what steps we ought to take for knitting the country into one nation. Majority community ought to find out the ways for filling up the shortage, if any, in the representation of the minorities.

With this end in view let us proceed in a way whereby one united nation may emerge. There is no time left; otherwise I had to say much more on this subject.

Mr. Vice-President (Dr. H. C. Mookherjee): I have received notice of an amendment from Mr. Naziruddin Ahmad to the following effect :—

"That the Draft Constitution be referred to a Select Committee consisting of such members, elected or nominated by the Honourable the President in such manner as he thinks proper, to report thereon by such date as the Honourable the President thinks proper."

I rule it out of order on the ground that in the rules for the consideration and passing of the Draft Constitution there is no provision for reference to a select Committee. Acceptance of this amendment would amount to an amendment of the rules already framed. This cannot be done without reference to the Steering Committee. Not only that. Rule 31(4) says:

"The Chairman may disallow any amendment which he considers to be frivolous or dilatory."

I consider this a dilatory amendment. I therefore rule it out of order.

The Honourable Rev. J. J. M. Nichols-Roy (Assam : General): Mr. Vice-President, Sir, it is indeed a great privilege to associate myself in rendering tribute to Dr. Ambedkar and the other members of the Drafting Committee for the stupendous task they have undertaken to bring out this Draft Constitution. They all deserve our best thanks.

To me, the structure of the Constitution depicted in this draft looks good though it requires certain modifications in some details and important matters. By this constitution, India is to have unity in diversities, India with diverse races, colours, creeds, languages and cultures and with varied degrees of civilisation is being moulded into one Nation that will work together for the good of the common whole. This is not a small task. India is like the different States in the continent of Europe which have not been able to form a united sovereign country. But by the help of God and the wisdom given to our leaders India is having unity in the midst of diversities. This unity is not to be achieved by eliminating all diversities and putting all component parts into one mould by a stroke of the pen, for such an attempt will cause terrible revolution and great distress everywhere. The process for achieving the unity of India is by evolution as provided in this draft constitution.

The provisions for freedom of worship etc. etc. for minorities and for certain special areas and for hill tribes are the necessary stages for evolving unity in the midst of diversities. The wisdom of our leaders and of the majority community in acknowledging the necessity for allowing diversities in this unity structure is greatly appreciated and will be greatly appreciated by all. This is God's own method. God's own creation everywhere is unity with diversities. I thank Sardar Patel, the Chairman of the Advisory Committee for Minorities etc. He appreciated the needs of minorities and special tribal hill areas.

I must especially thank the Drafting Committee for accepting the draft for the creation of District Councils with autonomy in the hill districts in Assam which in the Sixth Schedule are called autonomous districts. These hill districts, inhabited by tribal hill people, will under this constitution be able to develop themselves according to their own genius and culture. The result, I believe, will be charming if these autonomous districts are nurtured to develop themselves in their own way without disturbing the main purpose of unity underlying the constitution presented in the draft. These tribes, though small in themselves, have been self-governing bodies from time immemorial. The India of tomorrow will surely stand to gain if the schemes for development of

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these areas are duly financed by the Government of India as proposed in the draft. Certain improvements in the Sixth Schedule will have to be made in the draft. I hope the House will accept the amendments which will be moved in due course.

While I fully appreciate the attitude expressed by Dr. Ambedkar and others as regards the strengthening of the Centre, I have to express that my views are very strong against the unbalanced strengthening of the Centre at the cost of causing weakness to the component parts thereof. It will be like the picture of an unbalanced man with a very big head but with bony and lean limbs. Such a head in that very condition will not be able to stand.

In perusing the printed amendments to Article 131 it appears that the Drafting Committee wants that the Governor should be appointed by the President. Powers are therefore proposed to be centralised. I hope the Drafting Committee will revise their view and find it undesirable to move it. I think this country has long given up the idea of nominated governorship with discretionary powers. The Drafting Committee has also given an alternative proposal for the appointment of Governors from a panel of four candidates to be elected by Members of the Legislative Assembly of the State. The argument of some of the members of the Committee is that the co-existence of an elected Governor and a Prime Minister responsible to the Legislature might lead to friction and consequent weakness in administration; but at the same time the existence of a nominated Governor with discretionary powers might cause obstruction and deadlock. I have had experience as a Minister with eight nominated Governors. I am strongly of the opinion that an elected Governor will be better substitute. This matter will be discussed at length when the amendments to Article 131 are moved in this House. I shall have occasion to say more about this then.

In the matter of Finance this draft is very unsatisfactory—particularly in reference to smaller Provinces. It does not give a fair deal to the Provinces. Poor Provinces like Assam and Orissa have reasons to be particularly disappointed. Those Provinces should not be weakened financially. Even one weak limb of the body will make the whole body weak. If India is to live and prosper, the States which are its components parts should function as healthy organs of the body politic of India. To come to the point, I want to say that the provisions of Articles 253 and 254 cannot be appreciated by us. They are couched almost in the same language as that of section 140 of the Government of India Act of 1935. The good wishes of the Government of India have so far remained a dead letter while the backward Provinces like Orissa and Assam remain where they were before. Even this year, Sir, our Assam Province is being greatly hit by the financial policy of the Central Government. We were in great hopes that our most essential needs such as building up of institutions for educating and training personnel in various nation-building activities would be satisfied, but we are told that these have to be postponed or delayed. The construction of strategic highways and roads absolutely essential for giving relief to our distressed people living on the border of Pakistan and for the protection of the country are proposed not to be pushed on with the same rapidity as it is essentially necessary to be done for we are told that not even one-fourth of the money required for these schemes for the current year will be available to us. The great Congress organisation has declared that our goal is a co-operative commonwealth, but when rural centres for an all round development of the villages are proposed to be opened on co-operative principles, the money required for the fulfilment of the schemes in this connection is not forthcoming. Our Assam Government in order to raise the maximum finances it is capable of doing, within the provincial list, has exhausted all the sources of taxation; but our province is yet faced with a deficit of about a crore, while its substantial income is only over four crores. But Assam would have had enough to bear its own responsibilities without begging from the Centre, had not the Central Government taken away the export duty on tea. Tea and petroleum are produced in Assam. If the excise and export duties on

tea and petroleum are allotted to us, which give about eight crores of rupees annually from Assam alone to the coffers of the Government of India, we shall have enough to finance our development schemes all round. Why should not this export duty be given to Assam, at least the largest share of it, every year?

An Expert Committee was appointed to investigate these questions and the Premier of Assam, Mr. G. N. Bardoloi himself led the deputation before the Committee. While the Committee conceded that a portion of the export duty on jute could be given to Bengal (a small portion of which comes to Assam also) and that a portion of the excise duty on tobacco might be given to the Province of Madras, the Committee did not consider it desirable to concede anything in favour of Assam on account of tea and petroleum produced in Assam. Is this just and equitable? Assam is kept under this system of eternal doles from the Centre. It passes our comprehension why this difference is made. Is it because Assam does not have a strong voice in the Centre? For many years during the rule of the British, Assam has been crying hoarse against this injustice committed by the central financial authorities in the past; but all our cries and condemnation of that injustice have gone unheeded by the Centre. Why reduce this producing province which could have had enough to support itself to a state of a beggar perpetually? Sir, I hope any strengthening of the Centre financially in this manner while robbing a province of its legitimate right will not be supported by any one. I believe that this just House with reasonable minds and sympathetic hearts will see that the province gets a fair deal. Facts should be faced.

I think myself that the authorities have been so busy with other matters that their attention could not be drawn in the past to this matter of life and death for Assam. We are today appealing to all the Honourable Members to come to our rescue at this time. Let it not be forgotten that Assam is a Frontier province which is subject to aggression from all sides. It is the duty of the whole Union to attend to this from the very beginning before evil days come. It is also very necessary for India to keep the bordering areas supplied with the necessities of life in order to keep them satisfied, otherwise adverse elements will cause great trouble which may cost India ten times more than the amount of money which may be spent during peaceful time. It will be a shortsighted policy to deprive our Assam province of its export duty on tea and to reduce its legitimate share of excise duties on tea and petroleum etc. In the past the bureaucratic Government overlooked the claims of backward Provinces like Assam or Orissa, but how can we imagine that this Constituent Assembly will allow the perpetuation of the same wrong which was done by the alien Government? I hope, Sir, that when the amendments to right this wrong are brought before this House, they will receive full support from all the Members of this august Assembly.

Before I close, Sir, I must also say that adult franchise is necessary as the basis of election. The people everywhere must feel that freedom has come to them and that they have a share in the shaping of the administration of the country. This has been the hope given by the Congress in the past and any deviation from this principle will cause disappointment and arouse agitation in the country. It is true that the common man in the villages does not understand much, but it is the duty of the politicians to educate the common man in the right direction. We have adopted democratic principles, and the salvation of our country is to educate the common man and trust that he will be guided to exercise his right of franchise in the right direction.

I do not want to take the time of this House with other observations and criticisms which I would have liked to make, but before I conclude, I want to say that if we are going to build up a democratic State, we must make everyone in this country, however humble and poor he may be, feel that he has a share in the making of a better country. We must cultivate the spirit of fraternity and this should have full sway in this country of ours

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so that everyone of us, however humble and low we might be, can feel proud of this country to which we belong. God also will no doubt help us when we are saturated with this spirit of honesty and fraternity.

Mr. Mohammed Ismail Sahib (Madras : Muslim): Mr. Vice-President, Sir, I thank you, in the first instance, for having allowed me some time though almost at the last stage of this general debate. I shall touch only on a few of the points I wanted to place before the House and try to compress my ideas within the short time which I understand has been kindly allowed to me by you.

Sir, it is indeed a great speech in which the Honourable Dr. Ambedkar has commended the consideration of the Draft Constitution to the House. For lucidity, for persuasiveness, impressiveness and logic I do not think that it could be beaten. All congratulations to him. But this does not mean that one is agreeing with everything that is said by him in the speech. For example, take the question of provincial autonomy, the relationship between the Centre and the States. He pleads more really for a unitary type of State. He says that a balance has been struck between federalism and the unitary type of Government. But I am inclined to think, when I go through the Draft Constitution, that the emphasis is too much upon the unitary nature of the State. In my view, this is not conducive to the happiness and prosperity of the country. Ours is a vast country of great distances and huge population. However much the Centre may be anxious to accord uniform treatment to the various parts of the country, still, in the very nature of things, there will be drawbacks and shortcomings. This will naturally lead to discontent, and conflict. It is for this reason that many political thinkers have been of the view that a federal type of Government is more suitable than anything else for such a country as ours. We in India need not be afraid of anything like disintegration or undue clashes and conflicts between the various parts of the country. The example of the United States of America has been cited. What has happened there really? This country which has got more than forty States, all autonomous, have as one unit, stood two of the severest wars ever known to the history of mankind, and these States have also stood together and have dealt with and confronted successfully the stress and strain of post-war problems that faced them after the last two wars. Take again the case of Russia. The States of Russia are called autonomous Republics. It is said that they have got even control over external affairs. What has happened? That country with all these autonomous republics, has been able to withstand the deadly and terrible onslaught of the last war, and today she is as one big country, able to pull on in the face of so many hardships and difficulties. Therefore, it is not so much the type of Government, or the number of powers which we give to the Centre that really matters. It is the character of the personnel which runs the Government, and it is the character of the people that really counts in these matters. Sir, in spite of the Russian States being autonomous republics, what has happened? Russian has become totalitarian. The Centre has come, in actual fact, to be over-weighted with powers. That is human nature. Here, it is said, on occasions, our Constitution will become unitary. But, in the nature of things, when once it becomes unitary, the tendency will be to stay on the unitary type of Government. I say that the federal system is more suited to the conditions of our country than the unitary type.

The conditions in different parts of the country are different. Therefore they have to be dealt with by the people who are in more intimate touch with those conditions from day to day. In this connection. I shall just touch on one point. That is to say, when the province is deprived of so much of its

autonomous powers, there is a proposal which does not agree with this framework, *viz.,* that of the election of the Governor through adult franchise. The Governor himself is only a constitutional head if he is not a figure-head and to go through all the paraphernalia and trouble of having him elected by tens of millions of people in a province is not necessary and it really bristles, with possible difficulties and probable hardships apart from huge expenditure it would involve. The Governor must of course be elected by certain agencies in the provinces and States themselves and that is in keeping with the provincial autonomy of my pleading. Such an agency might take the form of an electoral college consisting probably of members of the legislature in a province, members of the municipalities and district boards and I would even go, if friends would like it, to the extent of including members of the Panchayat Board as well. After all it may mean only about fifty or sixty thousand voters in a big province while according to adult franchise it will run into crores, and when the Governor is also elected by the people through adult franchise it is only natural that on occasions he will come into conflict with the ministry which will claim to be the spokesmen of the people.

Regarding Fundamental Rights, the Mover of the Resolution said that the exceptions have not eaten up the rights, but as a matter of fact they have actually eaten up the rights. He says everyone of these exceptions can be supported by at least one decision of the Supreme Court of America. To say so is on a par with the argument advanced by the British politicians when the Government of India Act of 1935 was on the anvil of the Parliament in Great Britain. They said they were including in that Act things which were followed in Great Britain as a matter of convention. They said that things were there and they had come into being and therefore it was that they were putting them into that Act. To say that the Supreme Court has decided in a certain way, has decided that certain exceptions are quite legal and all right and therefore such exceptions must come into our Constitution—to say that is different from saying that the people will have the freedom of going to Supreme Court or Federal Court whenever a fundamental right is in question in doubt. This freedom of the people to go to the Federal Court even as against the Government will really imbue them with a sense of real freedom and that will also have a salutary check on the Government which is very necessary in democracy.

Some of my friends claimed that this Constitution is a political Constitution but really is it so—I don't know. It deals with untouchability, temple-entry and religious instruction. I don't blame the Constitution or its drawers for this. I say it is quite right in noting these things; but one important fundamental thing I want to refer to and that is regarding religious instruction. The Constitution says that religious instruction shall not be provided in any of the State schools. Taking this provision with the compulsory elementary education which is being introduced in almost all the provinces. It means that the Government is against religious instruction, it is against people getting instruction in their own religion even if they wanted it. Therefore until 15 years of age up to which age the children have to be sent to these elementary schools they shall not have an opportunity in these schools of having any instruction in religion. But it is the right of the people to have instructions in their respective religion. That right is not derogatory to the neutrality or secular nature of the State. The State would not impose any religious instruction upon people who do not like it. They only give facilities for the people if they want to give instruction to their children in their own religion.

Then, Sir, I have to refer to the question of minorities. Some friends said that reservation must go; some said it must go because it is not of much use and some said that reservation as such must go. They said that it was goodwill that was required and not reservation. It is really true that goodwill is required; it is essential even in the working of this elaborate bulky constitution

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and without goodwill any elaborate scheme will be of no avail. But on that plea goodwill might be taken as a substitute for many other provisions in the Draft Constitution; nevertheless, those provisions are there. Goodwill has to be grounded on something and it can't live on air. There has to be something for goodwill to be based upon and for it to grow and that is the elementary rights—fundamental rights and safeguards given to minorities. Therefore it is that my community wants this reservation though it alone does not satisfy their requirements. I don't mean to say that it satisfies the people who want representation in the legislatures. They want themselves to be given the right of really representing their views and the feelings and aspirations before the legislature. Will these people who are the occupants of these reserved seats under joint electorates be able to express the view of the community as such? When I say this we should not rake up the past and I don't want to refer to the past and kindle and stir up controversies and disputes. We should take up this question on its own merits—whether it is reasonable or not we should consider. In my view there should not only be reservation of seats but these seats should be filled up through separate electorates. I don't find any other alternative if you want to give the right to these minorities to express themselves before the majority community, before the country and before the legislature. This is all that is meant by this electorate. It is no barrier between one community and another and if there was any trouble in the past it was not due to this system of election, but it was due to other things. As I have told you, I don't want to enter into the past. Again, when we talk of these separate electorates communalism is brought forward. In this connection I would only give the House the benefit of a quotation from one of the Ministers, a Congress Minister in the Madras Assembly, about ten days ago. A question was put regarding communal representation for the admission of students to a certain college.

One of the Members put the question to the Minister:

"How is the Minister justified in preserving and fostering communalism even within the ranks of the Hindus themselves?"

Then the Minister for Education answers:

"It is not the Government that do it. It is there. The communities exist. It is an unwise man that does not take note of the things that exist. People are born and die in these various communities."

Then the Minister further added:

"The Government wanted to put an end to this communalism. But without giving equal opportunities to the various communities to come up that could not be done."

That is the view expressed by a Congress leader belonging to the majority community who is now working an important portfolio in one of the important provinces of the country.

Therefore, Sir, that is the position. There is no harm in recognising those communities and this is not a position peculiar to our country. When I was a young-man I used to follow the national movement of Egypt. When they first wanted independence, a community called the Copts came up. This community started a counter-movement. They wanted to be assured of their rights under independence and then Zaghlul Pasha, the leader of Egypt called those people and asked them to formulate their demands. The demands were brought forward in due course of time and he considered them. He then said that those demands alone would not secure the minority's rights and position; that they would not even give them the right or proper expression. He said that he was giving them more. That was how the minority was treated in that country. Until then, whenever there was anything about Egypt there

would be something about the Copts as well. But all this changed. From that day of settlement until now we do not hear the name of the Copts at all. Now they are a contented people. They are all living today as one people. I hope the House will consider this question in a dispassionate manner, excluding any emotionalism or sentiment from the subject.

Shri Algu Rai Shastri (United Provinces : General): *[Mr. President, as there is only one hour left at our disposal I would request that the time for discussion be extended by a day. Many members have expressed a desire to speak and so far no closure has been moved. It appears that the House wants to have more discussion on the subject. The issue is of great importance and, as Shri Diwakar said yesterday, it should not be disposed of hurriedly. At least one day's extension should be given for its consideration. Only some of those persons whose names are already with you would like to speak. I beg to make one more submission. Sir, the entire time today has been given by you to those whom you consider to be the members of minority communities. They have placed their view point before the House. Will you not now give an opportunity to those whom you consider to be members of majority communities to place their views? Some reasoned reply to objections raised here must be permitted to be made here so that the world may be influenced to believe that whatever decisions are being taken in this House, are based on reasoning and not on a majority vote. If any one wants to meet the objections raised here, he must be given an opportunity to do so. There is the question of language, the question of our relations with Great Britain and other problems of this kind. These are very important matters and require through elucidation in the House. I would, therefore request you kindly to give us one day more for discussion. We must have at least one day more so that others also place their views on these matters.

Mr. Vice-President : You want one extra day !

Pandit Govind Malaviya (United Provinces : General): May I support that request. I think we are discussing a very important matter, for which there will be no other opportunity and I think, even when three days have already been devoted to this, so long as there are a number of Members of this House who have yet to express their views before it on this matter, I think we shall be doing nothing wrong in extending the time.

The Honourable Shri B. G. Kher (Bombay : General): Tomorrow again a request will be made that one more day should be granted. There will be plenty of opportunities when amendments are moved and all these points could be brought out. We have been treated to a variety of views indifferent languages and sufficient light or darkness has been thrown on a subject which has been before us for two years. I sympathise with Members who want to speak and to be heard, but I do submit that there ought to be some finality to such general discussion and when you have already extended the time by one day I thought that was enough. I suggest there should be no more extensions.

Shri Mahavir Tyagi (United Provinces : General): As long as there is one Member who wants to record his opinion on this subject, he should be given a full opportunity to express himself. I therefore submit, that not only one, but if tomorrow we want another day, then another day must be given.

Mr. Vice-President : I have here the names of about forty gentlemen who want to speak. At the same time I have to point out that I have been keeping a note of the principal items touched upon by the previous speakers, and I find that they concern more or less six different points. Already about thirty Members have spoken and they have gone round these six different

* [ ] Translation of Hindustani speech.

[Mr. Vice-President]

points. If the House is certain that the gentlemen who come here-after will be able to do something more than cover these six points, then there will be some justification. But I am in your hands. I am perfectly prepared to extend the time, provided you can convince me that something new will be contributed.

Pandit Govind Malaviya : Would you like us to submit to you a precis of the points we wish to raise?

Mr. Vice-President : Perhaps you have misunderstood me and that deliberately.

I have never suggested that I wanted a precis. But those who have sat down here and listened—you came only today and so you do not know the points that have been touched upon.....

Pandit Govind Malaviya: But I have taken the proceedings home and studied them !

Mr. Vice-President :... the Members whose names are already with me, if they can convince me or convince themselves that they have something new to contribute, then I am prepared to consider the proposition.

Mr. Hussain Imam : (Interruption)....

Shri Suresh Chandra Majumdar (West Bengal : General) : When there are forty names outstanding even a day's extension may not suffice. So you must go on for the whole week!

Shri Vishwambhar Dayal Tripathi (United Provinces: General) : I suggest two more days should be given for this discussion.

Mr. Vice-President : All right, I will give one day more. But I do hope the time will be used for some useful purpose.

Shri Alladi Krishnaswami Ayyar (Madras: General): Sir, before making a few remarks on the Draft Constitution, I should like to join in the tribute of praise to the Honourable Dr. Ambedkar for the lucid and able manner in which he has explained the principles of the Draft Constitution, though I owe it to myself to say that I do not share the views of my honourable Friend in his general condemnation of village communities in India. I must also express my emphatic dissent from his observation that Democracy in India is only a top-dressing on Indian soil. The democratic principle was recognised in the various indigenous institutions of the country going back to the earliest period in her history. Democracy in its modern form is comparatively recent even in European history, as its main developments are only subsequent to the French Revolution and to the American War of Independence. The essential elements of democracy as understood and practised at the present day are even of much later date and have gained currency and universal support during the last war and after its termination.

Before I proceed to make my remarks on the Draft Constitution, in view of certain observations of my honourable Friend Mr. T. T. Krishnamachari on the work of the Drafting Committee and the part taken by its members, I owe it to myself and to the House to explain my position. As a member of the Committee, in spite of my indifferent health, I took a fairly active part in several of its meetings prior to the publication of the Draft Constitution and sent up notes and suggestion for the cosideration of my colleagues even when I was unable to attend its meetings. Subsequent to the publication of the draft, for reasons of health, I could not take part in any of its deliberations, and I can claim no credit for the suggestions as to the modifications of the draft.

In dealing with the Draft Constitution, it is as well to remember that the main features of the Constitution in regard to several particulars were settled by the Assembly after due consideration of the reports of various committees; this Assembly is not starting afresh after two years of work. I doubt if even, some of the Members who animadverted upon certain features of this constitution settled by this House could disclaim responsibility for the decisions already reached. The federal framework of the Constitution with an over-riding power in the Centre, the need for a concurrent list and the items therein, the composition of the Houses, the relative powers of the two Houses of Parliament and in the provincial legislatures, the mode of election of the President and of the Governors, the relationship between the legislature and the executive, the constitution and powers of the Supreme Court and of the High Courts, the fundamental rights to be guaranteed to the citizen and a number of other matters relating to the constitutional framework, were settled by this House or considered by the Committees appointed by this House. In so far as the Drafting Committee has embodied in the articles as framed the considered decisions of this Assembly, the Drafting Committee can in no way be responsible for the decisions already reached, while it may be quite open to the House to revise those decisions on special grounds. In regard to such of the provisions of the draft as have not been considered by this House, it is open to this House, to come to any conclusion, consistently with the resolutions already reached and with the general framework of the Constitution.

The main criticisms on the Draft Constitution range under the following heads:—

Criticism 1.—It draws largely upon foreign constitutions and there is nothing indigenous about it. There is not much force in this criticism when it is remembered that federalism in its modern form is of recent growth, since the American Revolution and America has furnished the example to all the later federations. It cannot be denied that there is a strong family resemblance between the several federations and that each later constitution has drawn upon and profited by the experience and working of the earlier federal constitutions of the world. In this connection, it is as well to remember that even the Soviet Constitution has not departed from certain accepted principles of federal government.

Criticism 2.—The Centre is made too strong at the expense of the units. In view of the complexity of industrial, trade and financial conditions in the modern world and the need for large scale defence programmes, there is an inevitable tendency in every federation in the direction of strengthening the federal government. The Draft Constitution in several of its provisions has taken note of these tendencies instead of leaving it to the Supreme Court to strengthen the Centre by a process of judicial interpretation. I might point out in this connection that the U.S. Supreme Court, by the wide interpretation which it has put upon the General Welfare clause as well as on the trade and commerce clause in the Constitution, has practically entered into every sphere of state activity, so that it may be in a position to regulate the economic activities, the relationship between capital and labour, the hours of labour and so on, taking advantage of these two clauses.

Criticism 3.—The existence of a large list of concurrent subjects might lead to the Centre encroaching upon the provincial sphere and giving a unitary bias or character to the constitution. A study of the several items in the Concurrent List shows that they mainly relate to matters of common concern all over India. Whatever criticisms might be levelled against the British administration in India, the enactment of the great codes which has secured uniformity of law and legal administration has been its special merit. It is common knowledge that even the Indian States have adopted the great

[Shri Alladi Krishnaswami Ayyar]

Indian Codes. Instead of not having a Concurrent List or curtailing the list of concurrent subjects, I would advocate the Concurrent List being extended and applied to the States in Part III. The existence of a Concurrent List in no way detracts from the federal character of the constitution, there being an independent provincial list of subjects.

Criticism 4.—The constitution does not give sufficient importance to village communities which are an essential feature of India's social and political life. With the large powers vested in the provincial or state legislatures in regard to local self-government and other matters, there is nothing to prevent the provincial legislatures, from constituting the villages as administrative units for the discharge of various functions vested in the State governments.

Criticism 5.—The criticism regarding the fundamental rights was that they are hedged in by so many restrictions that no value can be attached to the rights guaranteed under the constitution. The great problem in providing for and guaranteeing fundamental rights in any constitution is where to draw the line between personal liberty and social control. True liberty can flourish only in a well ordered state and when the foundations of the state are not imperilled. The Supreme Court of the U.S.A. in the course of its long history has read a number of restrictions and limitations based upon the above principle into the rights expressed in wide and general terms. The Draft Constitution, instead of leaving it to the courts to read the necessary limitations and exceptions, seeks to express in a compendious form the limitations and exceptions recognised in any well ordered state. It cannot be denied that there is a danger in leaving the courts, by judicial legislations to speak, to read the necessary limitations, according to idiosyncracies and prejudices it may be of individual judges.

The problem of minorities has been solved by common agreement in a manner satisfactory to the various parties concerned, and the draft Constitution merely seeks to give effect to the agreement reached. As has been pointed out in the spirited address of our Prime Minister this morning, while regimented unity will not do, nothing should be done which will tend to perpetuate the division of the nation into minorities and to prevent the consolidation of the nation.

The next criticism is that the common man is ignored and there is no socialistic flavour about the Constitution. Sir, the Constitution, while it does not commit the country to any particular form of economic structure or social adjustment, gives ample scope for future legislatures and the future Parliament to involve any economic order and to undertake any legislation they choose in public interests. In this connection, the various Articles which are directive principles of social policy are not without significance and importance. While from the very nature they can not be justiciable or enforceable legal rights in a court of law, they are none the less, in the language of Article 29, fundamental in the governance of the country and it is the duty of the State to apply the principles in making laws. It is idle to suggest that any responsible government or any legislature elected on the basis of universal suffrage can or will ignore these principles.

The financial provisions in the draft Constitution have also come in for strong comment from my honourable friend Shri T. T. Krishnamachari. While an independent source or sources of revenue are certainly necessary for the proper functioning of a federal government, there is a distinct tendency, however, in the several federations, for the Central Government to act as the taxing agency, taking care to make adequate provision for the units sharing in the proceeds as also for the central or national Government granting subsidies. After all, it cannot be forgotten that the tax payer is the individual

citizen or a corporation—whichever the taxing agency might be—and the multiplication of taxing agencies is not a matter of convenience to the citizens. I doubt whether in the present uncertain state of the country it is possible to overhaul the whole financial structure and attempt a re-distribution on entirely new lines. That is why a provision has been made for a Financial Commission at the end of ten years. Possibly the draft is defective in that special provision has not been made for the re-arranging of the lists in regard to financial matters in light of the recommendations of the Financial Commission without having recourse to the procedure as to Constitutional Amendments.

In regard to the subject of taxation, Professor Wheare makes the following observations in his recent Treatise on Federalism:—

> "There can be no final solution to the allocation of financial resources in a Federal system. There can only be an adjustment and re-allocation in the light of changing circumstances."

We then had the criticism that the Constitution is far too detailed and elaborate and contained more number of articles than any other known Constitution. This criticism does not take note of the fact that we are not starting a Constitution a new after a Revolution. The existing administrative structure which has been worked so long cannot altogether be ignored in the new framework. The second point that the critics have failed to take note of is that unlike other constitutions, the draft Constitution contains detailed provision as to the constitution and power of the Supreme Court and the High Courts and also Articles relating to the Constitution of the units themselves. If we could eliminate all those Articles, our Constitution also could be rendered simpler and shorter.

In regard to the Judiciary, the draft Constitution also recognises the importance of an independent judiciary for the proper working of democracy, and especially of a Federal Constitution. The Supreme Court, under the Draft Constitution, has wider powers than any other court under any Federal system in the world.

More than any other provision in the Constitution, I should think the boldest step taken by this Assembly is in the matter of universal adult suffrage with a belief in the common man and in his power to shape the future of the country. For this institution to work properly too great a care cannot be taken in the matter of the preparation of proper electoral rolls and a uniform principle being adopted in the different parts of India. I would commend for the consideration of the House the suggestions made by my friend, the Honourable Shri Santhanam, in the course of his speech yesterday.

There are other matters which require very close and critical examination by this Assembly before the Constitution is finally adopted, such as citizenship, the formation of new States, and the position of the Indian States which have been grouped together under the able leadership and guidance of our Sardar. The position of the States which are not represented in the Constituent Assembly will also have to be considered and dealt with before the Constitution is completed as otherwise complicated legal questions might arise in regard to the relationship of these States *vis-a-vis* the Union of India.

There are two other points also which have been touched upon in the course of the debate. These relate to the emergency powers vested in the Government and to the ordinance-making power. One point that has to be remembered in this connection is that any power exercised by the President is not to be exercised on his own responsibility. The word 'President' used in the Constitution merely stands for the fabric responsible to the Legislature. Whether it is Ordinance or whether it is the use of the emergency power, the Cabinet is responsible to the popularly elected House. It should be remembered too that during the last debate it was the representatives.....

Prof. N. G. Ranga (Madras : General) : There is too much noise in the House. Another debate seems to be going on in that corner of the House.

Mr. Vice-President : Order in the House, please.

Shri Alladi Krishnaswami Ayyar: I may mention that during the last debate the representatives from the Provinces were more anxious, including the Ministers, than anybody else, to have emergency powers. It is they, having regard to the actual working of the administration, who wanted these emergency powers given to them. How exactly the emergency power is to be provided for, whether any changes are necessary, all that is another matter. So fas as the ordinance making power is concerned, the Ordinances will be passed normally when the Assembly is not in session. If the Assembly is in session, I do not think that the representatives elected under universal suffrage are likely to be less insistent upon their rights than the Members of this House elected on a comparatively narrow ticket.

A brief survey of the draft Constitution must convince the Members that is based upon sound principles of democratic government and contains within itself elements necessary for growth and expansion and is in line with the most advanced democratic Constitution of the world. It is well to remember that a Constitution is after all what we make of it. The best illustration of this is found in the Constitution of the United States which was received with the least enthusiasm when it was finally adopted by the different States but has stood the test of time and is regarded as a model Constitution by the rest of the democratic world.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, Dr. Ambedkar was pleased to make a reference to the Indian States and made an appeal that so far as the units are concerned, there need not be any difference in the constitutional set-up between the Provinces and States. I am glad that such an opinion is given, I think, though for the first time. Hitherto, every State was allowed to have a Constituent Assembly of its own and even the Unions of States were permitted to summon Constituent Assemblies for the purpose of framing their own constitutions. Many of us are wondering whether the Constituent Assemblies to be summoned in the States and Union of States are free to make their own constitution, whether they were in consonance with the Indian Constitution or not. I want to suggest some ways by which we can attain the desired end.

In Mysore, Sir, the Constituent Assembly has done almost half of its work, and when it was about to appoint a Drafting Committee, it thought it fit that the opinions of the other Assemblies in the States and also the opinion of this honourable House may be of much value in coming to final conclusions. Therefore it has appointed a Committee of five members to get into touch with the representatives of other States' Assemblies and if possible with this House also. The personnel of the Committee has been announced. I hope the Members representing the States in this House will be able to sit separately together either officially or unofficially and evolve a policy acceptable to this House and to the country. The constituent assemblies in various States and Unions of States will no doubt take the advice that may be given to them by the States representatives in this House. But there are certain impediments in the way which I would like to point out.

The States, as you know, Sir, even under the British regime were enjoying a certain amount of autonomy more in degree than the provinces were allowed to enjoy and that autonomy, I might say, has never been misused. Every State, whatever the degree of its autonomy, has always had the interests of India at heart and acted accordingly. We, the States people, feel that the Units of the Federation may not have sufficient autonomy in the draft as it

stands to manage their own affairs well and efficiently. The draft as it stands—I beg to differ from Dr. Ambedkar—is rather too much over-Centralised. It practically makes the Indian Union a Unitary State and not a Federal State. In their anxiety to make the Centre strong, they have given too much legislative and financial powers to the Centre, and have treated the provinces and States as though they were mere districts of a province. This tendency, I am afraid, will not make for what is called the strength of the Centre. Let me tell all those who are concerned in drafting this Constitution that mere accumulation of files in the Imperial Secretariat does not make for the strength of the Centre. The strength of the Centre, if I understand correctly, consists in having a strong Army, a strong Navy and a strong Air Force and in the possession of sufficient money for these purposes, instead of it taking a begging bowl before the States and provinces. Beyond that, if they take too much power and accumulate their legislative lists, what happens is that the initiative that should come from provinces will not be there and the provinces will be reduced to mere automations. I have read experts on constitutions and one of the accepted tests whether a country enjoys freedom is to see how far the units and the local bodies enjoy freedom and autonomy. Different people understand the strength of the Centre in different ways and the Drafting Committee have merely understood that the mere accumulation of files in the Imperial Secretariat makes for the strength of the Centre. This is a great impediment in the way of the States people agreeing to have a common constitutional set-up for the units. Before the States agree to come on a par with the Provinces—I am talking here for all the units, States as well as provinces—they will have to be assured real autonomy, not autonomy to injure the interests of the State as a whole, but sufficient powers and responsibility to manage their affairs well and efficiently. We have forgotten whom we repeatedly call the Father of Nation. He said that the constitution should be a pyramid-like structure with the Centre occupying the apex. But the present set-up is absolutely topsy-turvy. The fear is there in the minds of the States people, that the Centre is taking too much power.

There is one other matter which has not been brought sufficiently to light and I hope I would not be misunderstood if I say that the States Ministry as such has caused more dissatisfaction to the States people than even the Political Department did previously. I have heard it said by the representatives of the States people in the House that the States Ministry has failed to take the opinion of the States people into consideration at all. They are more after the Princes and their Dewans. The people are really nowhere in the picture. It seems as though the Princes and the Dewans get everything and the people nothing. If the integration of States has taken place today, it is not because the Princes wanted it or their Dewans manoeuvred for it. It is because the people in the States who participated in the freedom movement had created such a position that the Princes had no other course except to follow this line, and it is a sorrowful thing that we have forgotten the people in our anxiety to placate the Princes and their Dewans. This psychology of the States Ministry has to be reversed as soon as possible in order to make the people really feel that they are one with the rest of India and they are in safe hands.

Then, Sir, the States have been enjoying in the matter of taxation much more latitude than the provinces. We have conceded three subjects and in order to meet the expenditure in connection with these three subjects, sufficient money may be provided. For example, most of the States collect income-tax just now. We have no objection if it goes to the Centre, but the other taxing heads ought to be left to the States themselves in order to meet their own expenditure. In fact the complaint is repeatedly made that the merging States today are not enjoying even as beneficent a Government as they were enjoying under the Princes. That is the opinion of the accredited

[Shri K. Hanumanthaiya]

representatives of the people. This is a very sorrowful feature. We expected that after the Princes went away and after the States were merged with the provinces they would get better amenities and better opportunities than they were accustomed to previously. It is a bitter feeling that is expressed by the States representatives. In the Orissa States and the Deccan States the administration under Congress Governments is not as beneficent as it was under the Princes' administration. I am not merely speaking as a representative of Mysore, but I have had occasion to talk with other States representatives and this is their opinion.

Then, Sir, Delhi happens to be the capital for the present. Most of us from the South, from Bengal and from other parts of the country, feel that Delhi is not suited to be the capital of India for various reasons. Historically Delhi has developed a course; it has got all the empires it had buried in its tombs scattered all about the place, and we do not want our new Government to go that way. I have got not a sentimental reason only. Here in Delhi excepting for two months either we have to sweat or shiver and in this extremity of climates, it is almost impossible to do any hard work. The capital of a country, it is reasonable to expect, should be in the centre of the country and we can locate our capital either in the C. P. or somewhere near about.

The Honourable Shri B. G. Kher (Bombay-General): Bombay is better!

Shri K. Hanumanthaiya: Sir, I might say, after I have gathered the opinions of many of my colleagues, I am saying that C. P. is preferred. For example, it may be Betulin C. P. Sir, there is an argument that having expended so much money on Delhi, is it wise for us to expend further sums of money for another capital? In Delhi, we can still locate some of the Central offices. Now East Punjab is hunting after a capital and they want to make Ambala as its capital. We can make over half of our Government buildings here to East Punjab Government and take money from them. In the financial proposals I see that after the partition of the Punjab it has not been able to maintain itself and wants a subsidy from the Centre. If you make Delhi part of the Punjab, there will be no necessity for us to pay the subsidy, for it will then be a self-sufficient province. From this point of view and from the point of view of public opinion also it is better and in the interests of the country and its future, Delhi should cease to be the capital of India. We must be able to build a fresh capital in the Centre Provinces. Thank you very much, Sir.

Mr. Vice-President : Pandit Govind Malaviya.

Pandit Govind Malaviya : Since we are carrying on till tomorrow, may I have the privilege of speaking tomorrow?

Mr. Vice-President : I think you had better speak now.

Pandit Govind Malaviya : Sir, before I say anything else. I should like to offer my cordial congratulations to ourselves and to the Drafting Committee and its versatile Chairman, our friend, Dr. Ambedkar, for the very excellent work which they have done in giving us this Draft Constitution. It was a difficult problem which they had to face and they have tackled it most excellently. There may be many things in the Draft Constitution which one might have wished to be slightly different, but then that must be so about anything which can be produced anywhere.

The reason, Sir, why I requested you to allow me an opportunity to take a few minutes of this House was not to put before this House all the points about which I wish the Draft was slightly different. In such matters, differences can remain, but after all they do not matter very much so long as a thing is tacitly good. For instance, in the Draft Constitution there are some things which personally I should have preferred to be slightly different.

There is the election of the President, Sir, by proportional representation by single transferable vote. I do not feel happy about it; I should have preferred that it should have been by a straight vote. The proportional method might prove extremely unhealthy but I do not wish to take one moment more of your time than is absolutely necessary. I can only mention that by the way. There is, Sir, the right in the hands of the President to nominate fifteen members to the Upper Chamber; I should have felt happier without that. Then there is the federal judiciary about which we have a fixed minimum limit, but we have no maximum limit. I am sorry, Sir, I came only today. I did not know this discussion was continuing. I have not brought my papers, etc. I was not prepared to speak just now. I am just saying a few things as they strike me. There is the minimum limit but there is no maximum limit fixed to it. I can contemplate a situation where the executive, the Government of India, might abuse that provision by adding to the federal judiciary a number of new judges and getting the work done by them and in that manner bypassing any inconvenient older judiciary. I do not suggest that it will happen, but when we are framing a constitution for the future administration of the country, the more cautious we are the better. I should, therefore, have preferred that there should be an upper ceiling also to the number of judges of the federal judicature.

Sir, there are many other similar things in the constitution to which I might have referred, as I said, about which I should have felt happier if they were slightly different, but that was not the main purpose of my taking the time of this House and I shall not inflict that upon you. What I particularly wish to suggest, Sir, is about the Preamble to this Constitution. We shall be failing in our duty to our country, to the entire history of our country, to the entire culture and civilization of our country, to the entire ideology of our people if we adopt that bald preamble which we have put into the Draft Constitution.

I should very much like that we should have in it a reference to the Supreme Power which guides the destinies of the whole world. The reason why I make this suggestion is not merely that we have it in many constitutions of the world. It is not on that ground that I make that suggestion. As I said, the entire background that we have in this country demands that we should do it. I will make only one submission about it as I do not wish to take up the time of the House and wish to be as brief as possible. We sit here as representatives of the people of India. Today, in this country, if we were to devise some method of finding out as to what the views of the people are in that matter, I am certain that more than ninety per cent of our people, if not more, will be staunch believers in God Almighty. They will desire that our preamble should have such a reference. I submit, Sir, that we shall be failing in our duty as representatives of our people if we,—even if some of us, even if all of us, do not believe in God—I say 'even', I do not say that it is so—but, even if that be so, I respectfully submit that we shall be failing in our duty to our people and to our country whom we represent here, if we do not bring that into the Preamble, because, as I said, more than ninety per cent of the people of this country believe in God and would like to have a reference to the Almighty in the Preamble. The great point about our culture has been, the great point about our philosophy has been, the great point about our social structure has been that, while we have with complete tolerance allowed unmolested place in society to every school of thought to the atheist and the agnostic, yet, as a whole, as a people, we have always had a strong and fervent belief in the higher Power which guides us. An all pervading, an active and living belief in, and devotion to God, has been, since the very beginning of our long and glorious history, the fundamental basis, the very foundation, the supreme essence of the very life of our people.

[Pandit Govind Malaviya]

Mahatma Gandhi's life, the life of the builder of our nation today, was one beautiful, unchequered sermon to that effect. He died with the name of God on his lips. Everyday, he practised Ramdhun and I submit that the glorious impression which our country has made everywhere in the world, in the international circles and gatherings, the great impression which our great Prime Minister has made recently in the Conferences where representatives of all the countries of the Commonwealth were present, is due to the philosophical background of our country, which has in the ultimate shape taken the form of our beloved Prime Minister's present brilliant and soothing policy which we have pursued under the leadership of Mahatma Gandhi. I submit, Sir, that we will be unjust to our people and to our country if we do not do that. I hope therefore that my friend Dr. Ambedkar and others will consider that aspect and will remedy that defect or omission as I feel it to be.

The other point that I should like to mention is that in our Constitution we should have our own name for our country. I cannot understand our having a Constitution in which our country should be called 'India'. I shall not suggest any particular name; I shall be content with any name which appeals to the whole House. But, what I submit is that it will be wrong to leave India as the name of our country. We may, for some time, if necessary, put down after our own name within brackets 'India', or say, "(Known in English as India)", as the Irish have done. But, to put down India as the name of our country appears to me to be ridiculous. That is the second point which I wish to bring before this House for its consideration.

The third point, Sir, that, I wish to submit is a little delicate. I hope no friend of mine will misunderstand me. In his speech, our friend Dr. Ambedkar referred to the question of minorities. He referred to the proceedings of the Irish Conferences about partition. But, he forgot that if there was a Cosgrave to say there, "To Hell with your safeguards; we do not want to be ruled by you," there was the entire English Government to back him up. We have none so here now. I am certain that no minority now will genuinely wish to have any such separate State. Therefore, I have got one submission to make. I do not say that we should not provide safeguards for minorities. By all means, we should do so; we should give them every assurance possible, not only in words, but in actual deed; but what I submit, Sir, is that the Article in the Draft Constitution about reservation of seats should have one further clause added to it—I do not want to disturb it—I do not want in any way to take away from it; by all means let the minorities have that reservation. The clause as it stands today, says that the reservation shall automatically go after ten years unless otherwise decided upon. All I want, Sir, is that if the minorities themselves or any section of the minorities themselves desire, even before the lapse of those ten years, to do away with this reservation or special representation, then, that Article of the Constitution should not be allowed to come in the way. As I said, I hope I will not be misunderstood. It is not my desire in the least degree to take away from the safeguards which have been provided; I only want that the possibility of the minorities themselves desiring and deciding to give up that reservation should not be ruled out. I hope, Sir, this will be done.

Then, Sir, I wish to submit that, at the end of our constitution, we should have a provision for a statutory revision of it after a certain period. I know that the provisions for amending the Constitution have been prepared with great thought. But, notwithstanding all that has been said, I still feel that the provision is not of a very easy nature. I should like to make it clear that I am not a believer in very easy provisions for changes or amendments to a Constitution. I firmly believe that it should be a very difficult thing to get through any amendments to a Constitution. But, for the first time at the

beginning, for once only, I should like that there should be a Statutory provision in our Constitution that after the experience of a few years, one review will take place, and as a result of that review, any changes which are suggested should be considered and dealt with by the method of simple majority. I should like to have that provision for only once. I am not dogmatic about the details of that suggestion. It may be after three years, five years or seven years. But, my purpose is that after we have experience of three or five years, once at least we should have a statutory review which should be there automatically and then after consulting the experience of people in the Provinces and at the Centre, we should adopt whatever changes may be necessary. After that, I should personally like to make the provision for amendments to the Constitution as difficult and as rigid as may be possible. I am anxious, Sir, not to let your bell ring. I shall therefore stop here. These are the few suggestions which I wish to place before the House and I am grateful to you for having given me this opportunity to do so.

Shri R. K. Sidhwa (C. P. and Berar : General): Sir, before we adjourn, may I know the final programme regarding the motion under discussion.

Mr. Vice-President : After tomorrow nobody will have the face to say that more time is wanted.

The House stands adjourned till 10 A. M. tomorrow.

The Assembly then adjourned till Ten of the Clock, on Tuesday, the 9th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 9*th November,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—*(Contd.)*

Mr. Vice-President (Dr. H. C. Mookherjee): I take it as the unanimous desire of the House that the general discussion on the Honourable Dr. Ambedkar's motion should be concluded today. I have noticed endless repetitions of the same arguments and I appeal to those who will speak today that they will avoid issues which have been already dealt with.

Shri R. Sankar (Travancore): Sir, I must at the very outset congratulate the framers of the Draft Constitution on the very efficient manner in which they have executed their duty; and I must particularly congratulate Dr. Ambedkar on the very lucid and able exposition of the principles of the Draft Constitution that he gave us by his brilliant speech. I do not propose to go into the details of the Draft Constitution but will content myself with dealing with one or two aspects of it. I think the most salient features of the Draft Constitution are a very strong Centre and rather weak but homogeneous Units. Dr. Ambedkar made a fervent appeal to the representatives of the States to take up such an attitude as to make it possible for all the States and the provinces to follow the same line, and in course of time to establish homogeneous units of the Federation without any distinction between the States and the provinces. But I think there are certain things which differentiate the States among themselves, and the States as a class and the provinces. There are some which are very well advanced and others which are not only not so well advanced but are really backward. There are States in which literacy is less than 5 per cent. There are States in which literacy is more than 50 per cent. There are States which levy income-tax. There are others which do not levy income-tax at all. In fact, there is such a great difference between the States amongst themselves than between some of the States and the provinces that it is very difficult to find much in common between the States and the provinces as they are constituted at present. For an example of a State which is advanced, I might take the case of Travancore, which I have the honour to represent. Travancore is, I think, one of the most advanced States in the whole of India. In certain respects she is ahead even of the provinces. She has been able to work herself up to the present position on account of the fact that all her revenue resources had been tapped for along time and the Rulers had tried to develop the State from very early times. Today, she is one of the most highly advanced industrial areas in all India. More than 50 per cent. of her people are literate. Though a small State with an extent of only 7662 square miles, she has a revenue of nearly Rs. 9 crores. She spends about Rs. 2 crores on education now, more than half a crore on medicine and public health and as much on village uplift; and in other nation-building activities she spends very large sums. But if this Draft Constitution becomes law tomorrow, what is going to be the fate of this State? That is what concerns the people of the States as a whole and the people of Travancore in particular. Our customs

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revenue is nearly Rs. $1^1/_2$ crores. Our revenue from income-tax is nearly Rs. 2 crores and other federal items will come to nearly another crore. In other words, about 45 per cent of the income of the State will be central revenue from the day this Draft Constitution becomes law. The result would be that a State like Travancore will not be able to maintain, much less improve upon her present administrative efficiency. The States people now look at this picture more or less from this angle. The Princes, who were till now the stumbling block, have most of them decided to introduce responsible government in their realms, and the Ruler of Travancore has made no reservation whatever in this respect. The people are now anxious how they will be in a position to carry on the administrative functions of the State at least as it was carried on under the old irresponsible regime. I believe the Honourable Members of this House will see that it is a very hard case for a State like Travancore. Unless there be some provision by which a sort of fiscal autonomy is allowed to a state like mine it will be simply impossible for the State to maintain the high level of development it has been maintaining till today. The people after the long struggle are looking forward to the present responsible governments in the States to find a solution for the hundreds of problems, especially economic problems, that they are faced with, and if the States, instead of being in a better position, are in a worse position from tomorrow, they will certainly find it impossible to do anything and to solve any problem that they face. This aspect has to be borne in mind when this Draft is considered by this Body.

Another thing about which I would like to speak one word is the linguistic affair. There appears to be very much enthusiasm on the part of Honourable Members from the North whose mother tongue is Hindi or Urdu to force it all of a sudden upon others who scarcely understand a syllable of it now. Though much work has been done in the field of propagating the national language, Hindi-Hindustani, in the South, if you go out to the villages you will find that not even 1 per cent of the population knows Hindi. Even if you take such an educationally advanced State as Travancore and another State which is educationally far advanced—Cochin—not even 1 per cent of the population can even today understand either Hindi or Urdu. I would therefore request the members who are very enthusiastic about this thing—this common national language to wait for a time, to give an opportunity to the people of the South and the East to get themselves sufficiently acquainted with it. Hindi, of course, is in favour everywhere. Only some time—probably a decade or two—will have to be allowed. In the meanwhile, English must continue to enjoy the position it does today. If that be done, I think there will be none from any part of India who will stand in the way of Hindi being recognised as the national language of India.

As my time is up, I close with these remarks.

Shri M. Thirumala Rao (Madras : General): Mr. Vice-President, Sir, as a new recruit to this Constitution-making body, I seek the indulgence of the House for the few remarks I have the privilege of making here presently.

We are now on the eve of great changes and we have been endowed with the power of shaping our future in a manner that suits our genius and tradition. Of course the past 150 years of British rule has made an indelible impression on the Constitution that has been presented to us. I do not want to go into the details of the Constitution. I want to deal only with one aspect of it, *viz.,* whether this country should remain a part of the British Commonwealth of Nations.

Sir, the Objectives Resolution has clearly laid down that the basis of our State should be a complete Sovereign Independent Republic. I feel, Sir, that in the present set-up of world affairs, it is but meet that India should from the very

first make an attempt to stand on her own legs and show that we are capable of developing our own institutions on the lines best suited to us. No doubt, British statesmen and all those people who are accustomed to be imperialists are looking askance at us wondering whether we will cut ourselves away from the British Empire. It is too late in the day to think of having any constitutional ties with the word 'Empire' which smacks so much of a feeling that had been engendered in the past. But one thing necessary is that we should not excite any jealousy on the part of powers like Russia or America by permanently tying ourselves to the apron strings of British Imperialism or British Commonwealth.

Now, whatever one may say, the balance of power is yet influencing world affairs; and India, strategically situated as she is in the Indian Ocean, midway between the Pacific and the Atlantic and the Mediterranean, has a special responsibility and an important role in maintaining world peace. Though we are a young nation, with very ill-equipped defences, it must be our duty to see that we estrange nobody in the world with regard to our position in international affairs. As such, if we make it plain that complete sovereign independence is our ideal and also the practical basis on which we are building up our Constitution, we may not estrange people like the Americans in the future.

In spite of all the tall talk that has been indulged in with regard to the Anglo-American Bloc, an under current of jealousy still persists in America against the British Empire. But they have realised—even Republican papers in America have realised—that they must make a little sacrifice of their trade monopoly in order to strengthen India and build up a bulwark against the forces that are now sweeping the East from Russia. From that point of view I feel that we must have complete Republican and independent sovereignty in our Constitution and from that point of view, we may command some respect and also some assistance from countries which seek our help and co-operation in the near future.

With regard to other matters, we must borrow a lesson from the Australian and Canadian Constitutions where the provinces and Centre have evolved a sort of relationship which is still the bone of contention in their law courts. The recent instance in Australia where Nationalisation of Banking was attempted is an example: the Centre wanted to nationalise the banks but the provinces resisted. So also in our future development, the relationship between the provinces and the Centre has to be evolved in the best interests of the country. We require no doubt a strong Centre, but a strong Centre should not mean weak provinces. The provinces also should be equally strong to enable them to perform their multifarious duties and to develop schemes. They should be left with sufficient financial resources to discharge their duties and contribute to the strength of the Centre.

With regard to Defence, we have been unfortunately split up by the machinations of British diplomacy. Whether it is Pakistan or India, India is one and indivisible as far as the defence of the country is concerned; Pakistan, which is separated on the north-east and north-west by long stretches of the Indian Union territory, is much too small to defend herself and will have to co-ordinate her defences with India. Our frontiers lie much further than Pakistan; our eastern frontier lies much beyond Assam and if we are to integrate these, we will have to keep the States well-knit and to enter into a sort of alliance with Pakistan by enclosing it within a super-federation of this federation.

Sir, I visualise a day when it will be impossible for the new States to remain as separate entities for long. There was wisdom in the proposal that these two States could combine for certain purposes like international trade, currency and defence. I will not rule out the possibility of such a combination in the near future, in the next decade, if we are to develop our Constitution on proper lines.

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One more point, Sir. We have been talking too much of a secular State. What is meant by a secular State? I understand that a secular State may not allow religion to play a very important part to the exclusion of other activities of the State. But we must make it clear that the ancient traditions and culture of this country will be fully protected and developed by the Constitution and through the Constitution.

Mr. Vice-President, I see that my time is up. With your permission I will conclude in another minute.

Wherever you go, to the Mother of Parliaments or to other British Institutions, you find invariably the Church associated with them, with their universities, with their Parliament, with their Courts of Law and so on. Although I do not want to impose our religion in our institutions to that extent, I do plead that we should protect our culture, our peculiar national characteristics and traditions. These should be protected by the Constitution. We should not forget, wherever we go, that we are not a hybrid nation or a disproportioned mixture of several cultures, but that we have a culture and a Government and a civilization of our own. This should be reflected in our Constitution.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I have sought this opportunity from you to speak during the discussion of the Draft Constitution, only because I felt impelled by a sense of duty that I should draw the attention of this august Assembly to two problems which I think are really constituting a grave danger to our newly-won freedom and to the unity and integrity of the Nation. I hope and wish that this Assembly, in order to safeguard the new and the nascent blossom of our freedom would provide adequate safeguards and provisions in the Constitution for the protection of the Nation and of our hard-won liberty from two great perils. These perils, indeed, are too grave to be ignored. The perils I mean are the evils of "provincialism" and "communalism" which, inspite of the "supreme sacrifice", have yet not been laid quite low. By this "supreme sacrifice" I mean the martyrdom of the Father of our Nation. For the time being it appears that the demon of communalism has been definitely laid low, but even so I was a little painfully surprised when yesterday honourable Members like Mr. Ismail and Mr. Lari.....

Nawab Muhammad Ismail Khan (United Provinces : Muslim): On a point of information. I never spoke yesterday.

Shri Raj Bahadur: Some of the Members of this House referred to the provision of proportionate representation and separate electorates. I mean to say Sir that, if we went to protect our freedom, we shall have to provide in our Constitution that just as we have said that there shall be no evil of "untouchability" in our body politic, so also we shall have to see that these tendencies, these idiosyncrasies which have been responsible for the vivisection of our mother-land shall not raise their ugly heads again. If I say this, it is because even today when we are finding that the effects of partition are still troubling our body politic, when we are not yet free from the evils of partition, there are people and forces in the country which are still trying to revive and perpetuate communal politics. It is absolutely necessary for us to see when we frame our Constitution that these evil forces do not imperil our freedom.

I may also say that there is another peril from which our country may suffer and that is "feudalism" that is still rampant in some of the States of Rajputana. Owing to the sagacity of our States' Minister, the problem of the States has been squarely dealt with, but may I still submit that the people in the various States of Rajputana are still under the thumb of these feudal landlords? The Jagirdari system is still there and the poor kisans for whom we have been clamouring for

freedom are still not breathing the air of freedom. The reactionary tendencies of these Jagirdars are still there and so I hope that, just as the problem of the States has been squarely dealt with, the problem of these feudal landlords will also be dealt with squarely and solved.

When I talk of feudalism, that naturally takes me to the problem of the States. In introducing the Draft Constitution which has been placed before us by the Honourable the Law Minister for discussion and consideration, he (the Law Minister) spoke of a dual polity. But in this Constitution, I find that there is a "triple polity" provided therein, inasmuch as the States are allowed to have constitutions different from the constitution for the provinces. We see that the States are allowed to maintain their own separate armies. We see also that their Constitutions would be devised and adopted by their own separate Constituent Assemblies. They have also been allowed to have their own separate judiciary and the people of the States will not be allowed to appeal to the Supreme Court even in defence of their Fundamental Rights. These things, separate armies, separate Constituent Assemblies and separate judiciary, are things which cause great concern to us, the people who have come from the States, and I feel that it is high time that this disparity, this incongruity between the various units of the Indian Union is done away with. I would submit, Sir, that it can be safely assumed that the Princes just as they have relinquished their powers for the sake of the nation, so also would they favour the bringing of the States on a par with the provinces for the sake of the unification of the country. I feel that it will also be possible for the provision relating to Rajpramukhs to be made analogous to that of the Governors. They may have the same powers as the Governors in the different provinces, but I would support definitely my friend Mr. Vyas in his appeal that the right of being elected to the high office of governorship may be conceded to the ordinary man in the street also. I do not see any reason why the office or the high post of a Governor should be restricted only to the Princes and depend only on their choice in the case of the States.

Then I may also respectfully refer to another factor which has lately come to light in our body politic and that is about the criticism that we see being levelled these days against our Ministers in almost all the provinces. That criticism may not have any justification behind it but still the criticism is there that our Ministers are not following the Gandhian ideals in their life, that they are travelling by aeroplanes, maintaining stately houses and so on and so forth. So I feel that in the Constitution there should be a provision giving a code of conduct for our Ministers so that we may not in future find, when history gives its verdict on us, that we have failed in our duty.

Lastly, I would beg to submit, Sir, that the provision for a Council of States in the Constitution seems to me to be redundant because an upper House has always acted as a dead weight upon the progress of the people. This smacks of a slavish imitation of the West and is quite unnecessary.

I hope these suggestions of mine will be considered by the House in due course.

Prof. N.G. Ranga (Madras : General): Mr. Vice-President, I am sorry to find that the Members of the Drafting Committee have completely forgotten the very fundamental thing that was really responsible for bringing this Constituent Assembly into existence and for giving them this chance of drafting this Constitution for India. One would have thought that it would be their elementary duty to have suggested to us that this Constitution is being framed by the Constituent Assembly which has been brought into existence by the labours of the countless martyrs and freedom fighters in this country guided and led by Mahatma Gandhi, but not a word has been said in regard to this matter. Therefore I suggest

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that we should make it clear that this Constituent Assembly comes into existence after India has attained freedom under the inspiring leadership of Mahatma Gandhi, the Father of our Nation, and that we are grateful for the unremitting struggle of the countless men and women to regain the right of independence for our nation. This is the least that we can possibly say in appreciation of the services rendered by these martyrs in our freedom struggle, and I hope the House will make the necessary amendment later on in this Draft.

Next, Sir, I am most unhappy that Dr. Ambedkar should have said what he has said about the village panchayats. All the democratic tradition of our country has been lost on him. If he had only known the achievements of the village panchayats in Southern India over a period of a millennium, he would certainly not have said those things. If he had cared to study Indian history with as much care as he seems to have devoted to the history of other countries, he certainly would not have ventured those remarks. I wish to remind the House, Sir, of the necessity for providing as many political institutions as possible in order to enable our villagers to gain as much experience in democratic institutions as possible in order to be able to discharge their responsibilities through adult suffrage in the new democracy that we are going to establish. Without this foundation stone of village panchayats in our country, how would it be possible for our masses to play their rightful part in our democracy? Sir, do we want centralisation of administration or decentralisation? Mahatma Gandhi has pleaded over a period of thirty years for decentralisation. We as Congressmen are committed to decentralisation. Indeed all the world is today in favour of decentralisation. If we want on the other hand centralisation, I wish to warn this House that that would only lead to Sovietisation and totalitarianism and not democracy. Therefore, Sir, I am not in favour of the so-called slogan of a strong Centre. The Centre is bound to be strong, is bound to grow more and more strong also on the lines of modern industrial development and economic conditions. Therefore, it is superfluous, indeed dangerous to proceed with this initial effort to make the Centre specially strong. In the Objectives Resolution that we passed in the beginning we wanted provinces to have the residual powers, but within a short period of two years public opinion rather has been interpreted by those drafters to have swung to the other extreme, to complete centralisation at the Centre and strengthening the Centre over-much.

I am certainly not in favour of having so many subjects as concurrent subjects. As Mr. Santhanam has rightly put it the other day, what you consider to be a concurrent subject today is likely to become an entirely federal subject in another five or ten years. Therefore, although I am quite ready to leave the residual powers to the Central Government, I certainly do not want the provinces to be weakened as this Draft Constitution seeks to do.

Sir, one of the most important consequences of over-centralisation and the strengthening of the Central Government would be handing over power not to the Central Government, but to the Central Secretariat. From the chaprassi or the duffadar at the Central Secretariat to the Secretary there, each one of them will consider himself to be a much more important person than the Premier of a province and the Prime Ministers of the provinces would be obliged to go about from office to office at the Centre in order to get any sort of attention at all from the Centre. We know in parliamentary life how difficult it is for ministers to have complete control over all that is being done by these various Secretaries at the Secretariat. Under these circumstances, it is highly dangerous indeed to enslave these Provincial Governments and place them at the mercy of the Central Secretariat and the Central bureaucracy.

Sir, I am certainly in favour of redistribution of our provinces, but in view of the fact that the President of the Constituent Assembly has appointed a Linguistic Commission to enquire into the possibility of establishing these provinces, I do think that any detailed discussion in this House is not in order, when that particular matter, before they make their report, is *sub-judice*; whether it is the top-most leaders of our country, the Prime Minister or the Deputy Prime Minister or any humble Member of this House—it is certainly *sub-judice* for any one today to express any opinion for or against the redistribution of provinces on a linguistic basis until this Commission expresses its own opinion. Therefore, I do not wish to say anything more, although I have certainly very much to say in favour of these linguistic provinces.

What are to be our ideals? We have stated some of our ideals here in the Fundamental Rights chapter as well as in the directives. But is it not necessary that we should make it perfectly clear in one of these directives that it is the duty of the State to establish village panchayats in every village or for every group of villages in order to help our villagers to gain training in self-government and also to attain village autonomy in social, economic and political matters, so that they will become the foundation stone for the top structure of our Constitution?

Next, Sir, I do not want this distinction to be made between the provinces and the so-called Indian States. Why should it be that the Indian provinces should be degraded into a kind of District Board status while these Indian States would be given so much special power and favours? Why should these Indian States be allowed to have their own separate Constituent Assemblies and formulate their own separate constitutions? Either we should have very powerful states including the Indian States and the provinces or we should have weak provinces and weak States just as is being proposed in this Constitution. I am certainly not in favour of weak provinces or weak States; I am in favour of strong States and therefore, I suggest that my honourable friends from the Indian States also should pool their resources with us and then agree that all the provinces as well as the Indian States should be placed on the same footing and they should be made as strong as possible.

Sir, in these objectives, nothing has been said about all those people who are living in our villages. There is something here said about the industrial workers. The industrial workers, unfortunate as they are, seem to be much less unfortunate than the rural people. It is high time, Sir, that we pay some attention to this aspect also in our villages. Certainly the Bombay Resolution of the Indian National Congress of August 1942 lays special stress upon the toilers in the fields, in factories and elsewhere. But no such mention is made here; special mention is made only of industrial workers. I suggest, therefore, that whatever we want to do must be for the benefit of all those people in the villages, in the towns, in the fields, in the factories and elsewhere.

Sir, in regard to the minorities, I am certainly not in favour of the reservations so far as the great Muslim community is concerned; they certainly cannot claim any longer to be such a helpless community as to be in need of these. One of those friends have come forward to say that they do not want to have these reservations.

I am not in favour of second Chambers, in the provinces especially. These second Chambers will only retard progress. Some people seem to think that some check like this should be put in there; it will only give a special premium to conservatism and therefore we should not have it.

Then there were some friends who said that this Constitution should be turned into a sort of rigid pole. I am not in favour of rigid poles; I am in favour of a flexible Constitution. If it had been found necessary within the last two years to swing from one side to the other, leaving the residuary powers to the provinces or keeping them with the Centre, then how much more it would be necessary in

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the next ten years for us to try to make the necessary constitutional changes in our own Constitution in the light of the experience that we would be gaining. So far we have not gained any experience. Our Constitutional Adviser has gone all over the world, he has consulted other statesmen and he has come back and suggested so many amendments. We do not know how many times we are going to amend our own constitution within the next ten years after this constitution is accepted and our new legislatures come into existence. Therefore, I welcome the suggestion made by the Honourable Prime Minister yesterday that we should try to make our constitution as flexible as possible and also to make it easier within the first ten years at least to make the necessary constitutional amendments to our own constitution.

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, objections of fundamental importance have been raised to the Draft Constitution as it has emerged from the Drafting Committee. I agree that there is nothing characteristic in this Constitution reflecting our ancient culture or our traditions. It is true that it is a patch work of some of the old constitutions of the west,—not even some of the modern constitutions of the west,—with a replica of the Government of India Act, 1935. It is true that they have been brought together and put into a whole. Dr. Ambedkar is not responsible for this; we alone have been responsible for this character of the Constitution. We have not thought that we must imprint upon this a new characteristic which will bring back to our memories our ancient culture. It is more our fault than the fault of Dr. Ambedkar.

It is no doubt true that Dr. Ambedkar gave an analysis of the several provisions of the Constitution, and unfortunately emphasised certain aspects of it, and gave his own views upon village republics, village autonomy and democracy. He could have spared us and spared the Assembly a controversy over these issues. Sir, left to myself, I would like very much that this Constitution must be based upon autonomous village republics. Democracy is not worth anything if once in a blue moon individuals are brought together for one common purpose, merely electing X, Y and Z to this Assembly or that Assembly and thereafter disperse. That is the present state of India today. People in the villages have had absolutely no opportunity to train themselves for democracy. They have not shared responsibility with anybody; they are absolutely irresponsible. That was the view that was taken and that was the purpose of the British who ruled us for 150 years. They destroyed the elements of our freedom, of our decentralised economy and the village republics that we had. They wanted to centralise the Government and concentrated all power in the Governor General and ultimately in the British Parliament. It was in that view that they took steps to see that the villages did not govern themselves. We must see that the villages is the unit for the social fabric that we are going to build. In the village itself, I would like that the family should be the unit, though for all-India purposes the individual must be taken as the unit for voting. The village must be reconstructed on these lines; otherwise, it will be a conglomeration of individuals, without any common purpose, occasionally meeting and dispersing, without an opportunity to come together and rehabilitate themselves both economically and politically.

But, as we are situated today, is it at all possible immediately to base our Constitution on village republics? I agree this ought to be our objective. But where are these republics? They have to be brought into existence. As it is, we cannot have a better Constitution than the one that has been placed before us on the model of some Western Constitutions. Therefore, I would advise that in the directives, a clause must be added, which would insist upon the various Governments that may come into existence in future to establish village panchayats, give them political autonomy and also economic independence in their own way to manage their own affairs. Later on, a time will come when

on the basis of these republics or autonomous panchayats a future Constitution may be built. I agree with our Leader, the Prime Minister, who spoke yesterday that this Constitution may be kept in a transitional form for a period of five years, so that in the light of whatever experience we may gather in this period, a future Assembly which may be elected on the basis of adult suffrage may re-draft our Constitution or amend or alter it. With that safeguard, I would urge upon this Assembly to accept the Constitution as it has been placed before us by the Drafting Committee and finalise it.

There is another criticism that has been levelled,—and according to me, it is a more serious one,—against this Constitution. To the man in the street, political democracy is worth nothing unless it is followed by economic democracy. In the Fundamental Rights, the right to speak, the right to address Assemblies, the right to write as one likes, all these have been guaranteed; but the right to live has not been guaranteed. Food and clothing are essentials of human existence. Where is a single word in the Constitution that a man shall be fed and clothed by the State? The State must provide the means of livelihood for every one. Russia has addressed itself to this problem and has concerned itself with the growing of food and the feeding of every citizen of the country by nationalising the means of production. In England, the Government cannot be in the saddle even for a single day if it allows even a single citizen to die of starvation. We have not yet taken any lesson from the 35 lakhs of people who died three or four years ago during the Bengal famine. Are we to perpetuate this tragedy? Is there a single word in the Constitution that imposes on the future Governments the obligation to see that nobody in India dies of starvation? What is the good of saying that every man shall have education, every man shall have political rights, and so on and so forth, unless he has the wherewithal to live? In England, either the Government must provide every citizen with employment or give him doles so that nobody will die of starvation. It is very disappointing to see that we have not introduced a similar provision in this Constitution. I would urge upon this Assembly that even now it is not too late, and that that must be our first concern; the other things may stand over if necessary.

There is another important matter to be considered and provided for. Otherwise India may be engulfed in a war or internal unrest. Now war clouds are thickening. There are two ideologies fighting for power, fighting for the supremacy of the world. On one side, there is the political democracy of the West; but there is the economic dictatorship of America. We do not want economic dictatorship at all; but we do want democracy. In Russia, there is no political democracy; but there is economic democracy. The two powers are striving for the mastery of the world; on account of this a war may come at any time. Is there anything here in this Constitution to say that we stand for economic democracy along with political democracy? There is a vague reference in the Objectives Resolution that there shall be social justice and economic justice. Economic justice may mean anything or may not mean anything. I would urge, here and now, that steps should be taken to make it impossible for any future Government to give away the means of production to private agencies. We have seen what private agencies mean. So far as cloth is concerned, within a short time of the removal of controls, prices went up. Why should we not take charge of all the mills and produce the necessary cloth? Even in the matter of food, in spite of all the exertions of this Government as well as the previous Government, are we able to grow sufficient quantity of food and distribute it in the country? I would therefore say, the time has come in this country when we must make a departure. We should not follow the economic dictatorship of the West or the political dictatorship of Russia. In between, we must have both political democracy as well as economic democracy. If we have to stand out as the protectors of Asia, or chalk out a new

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line and avoid all wars in the future, this alone can save us. Let us not be complacent. Communism is spreading. In the north there is communism; it has come to our very shores. China has been practically swallowed up by the communists. And likewise Indo-China. Burma is also in the grip of the communists. I do not know to whom I could attribute the sabotage of telephonic communications in Calcutta. I understand that there is a movement there to destroy the water works and destroy the power house also. There is a rumour afloat that in Delhi itself, there is going to be a strike in the Waterworks Department as also in the Electricity Department. Unless we make up our minds to have economic democracy in this country and provide for it in the Constitution, we may not be able to prevent the on-rush of communism in our land.

The next important matter for which provision should be made is the effective consolidation of our country as early as possible. I was really surprised to hear the words of my friend Mr. Hanumanthaiya yesterday. The people in the States were anxious to fall in line with the rest of India. They wanted to get rid of the Rulers; we helped them; when once they regained freedom, they want to supersede these Rulers and become the rulers in their own States. Big States and small want to be separated from the rest of India. Why should not they adopt this Constitution which is framed for the provinces also?

Shri K. Hanumanthaiya (Mysore): On a point of personal explanation, Sir, I never claimed any separate status or independence for any of the States.

Shri M. Ananthasayanam Ayyangar : There is a view that so far as the States are concerned, if they merge in India they will lose the peculiar privilege of having Prime Ministers in their small places. That is a disadvantage they have, I agree, but it is better to fall in line with the rest of India. Why should they not adopt the position in the rest of India and why should they reserve all the subjects for themselves and give only three or four subjects?

(At this stage Mr. Vice-President rang the bell.)

In the case of a Bill there is no question of time. Strangely enough you have imposed a time restriction.

Mr. Vice-President : You must set an example to others.

Shri M. Ananthasayanam Ayyangar : I will accept what you say; there will be ample opportunities and I shall clear up this matter later.

Shri Rohini Kumar Chaudhari : (Assam : General): Sir, I am deeply grateful to you for having given me this opportunity of participating in this debate of momentous importance but before I proceed, I should like to pay my share of tribute to the Members of the Drafting Committee, its worthy President and above all, our Constitutional Adviser whose services to our poor Province, Assam, in the heyday of his youth are still remembered with affection and gratitude.

Nevertheless, I must say that this Draft does not claim perfection and there are faults of omission and commission to which I must refer in the course of my speech. The first and foremost question which strikes me that this House should consider is whether they want to retain the State of Assam in the first schedule of this Constitution Act. The position has become somewhat difficult now, and you must once for all decide and provide in this Constitution measures which would enable Assam to be retained in India. I refer to the lamentable neglect to make any provision for finances so far as my province is concerned. It has been stated in the report that for five years the *status quo* must continue, which means that Assam at the end of five years will cease to exist as any province of importance. Sir, I must just go into a little detail. At

the present moment there is a deficit of one crore rupees in that province and the total revenue of the province including what is obtained from the Government of India is to the tune of four crores only and already the expenditure has gone up to five crores. If you have to maintain the minimum standard of administration of an Indian province, at least an expenditure of eight crores is necessary. From where is this amount to come? We have said and urged even in the olden days that we must get a share of the petrol and kerosene excise duty, and a share of the export duty on tea; but nothing has been so far done even though the conditions are so desperate. The Drafting Committee does not make any exception in the case of the special condition of that province. Sir, we have gone to the maximum capacity of taxation. Our rate of taxation is far more excessive than any other province and we tax ourselves at the rate of 4.3 whereas the rest of the provinces tax themselves at the rate of 4.9. We had started levying tax on agricultural income long before the rest of the provinces and we had taxed ourselves for amusement and luxuries long before others and even now our conditions are so desperate as this, and I would appeal to this House that if you really want to retain Assam in India, you must make some special financial provision for her and you must pay some special attention, otherwise that province will become bankrupt. India is one body politic and if one finger of that India is rotten, the whole India will rot in the long run. If you allow Assam to be ruined now, you will see that you will have to suffer ultimately for that.

I would like to refer to another point, and that is with regard to Article 149. Curiously enough, I find an amendment has been suggested which if given effect to will lay down a very dangerous principle, the principle of converting a general population into an absolute minority. I refer to the amendment which had been suggested by the Drafting Committee and which says:

> "That in clause (3) of article 149, after the words 'save in the case of the autonomous districts of Assam' the words 'and in case of constituencies having seats reserved for the purposes of article 294 of this Constitution' be substituted."

If this is given effect to, it will mean that all communities with reserved seats will have constituency of less than 1 lakh population whereas the general population must be restricted to constituencies having only 1 lakh population. This will mean additional weightage being given to reserved seats which is not claimed or asked for by any of the communities. The proportion of the population in the province is as follows:

Hill tribes	...	18	per cent.
Muslim	...	17	per cent.
Scheduled Castes	...	4	per cent.
General	...	34	per cent.

Where have you seen in a province where the general population is 34 per cent out of a total of 74 per cent that special weightages have to be given to communities ranging between 18 and 17 per cent of the total population? And yet if this is accepted it will mean that the general population will have to give up some of their seats and will get less than what they are entitled to on the basis of population. This is a dangerous principle, and though it refers only to one province it will create a situation in which the general population will be converted into a minority and weightage given to other people for whom seats have been reserved. Of course the proposition which I make will not affect the tribal population at all because they will have their autonomous districts. I certainly see that there are complications in the case of reserved seats if you

[Shri Rohini Kumar Chaudhari]

adopt the formula of one lakh representation; but the best thing to be done in this matter would be to make an exception in the case of Assam in regard to having a constituency for a lakh of people.

I will refer to one other act of omission. In the Draft Constitution there is no mention of women. I think the peculiar composition of the Drafting Committee which consisted of people who have no domestic relations with women made them nervous about touching on that point. In this House there has been no mention of a special constituency for women. I know there are Members here who have unbounded faith in the chivalry of men and who consider that they will be quite competent to get seats even though no special constituency is reserved for them. But outside this House that is not the feeling. Women generally have lost faith in the chivalry of men. The young men of today do not show respect to them even in the trams and buses.

Mr. Vice-President : The Honourable Member has reached his time limit.

Shri M. Ananthasayanam Ayyangar : Sir, on a point of order, I do not find in the rules any provision for a time-limit in respect of Bills of this kind.

Mr. Vice-President : That was done with the consent of the House. First it was 10 minutes, then it was extended to 15 minutes, and then to 20, and again it was brought down to 10 minutes.

Shri Rohini Kumar Chaudhari : Sir, from my experience as a parliamentarian and a man of the world I think it would be wise to provide for a women's constituency. When a woman asks for something, as we know, it is easy to get it and give it to her; but when she does not ask for anything in particular it becomes very difficult to find out what she wants. If you give them a special constituency they can have their scramble and fight there among themselves without coming into the general constituency. Otherwise we may at times feel weak and yield in their favour and give them seats which they are not entitled to.

Shrimati Renuka Ray (West Bengal : General): Sir, the main features of the Draft Constitution embody the principles of a democratic federation and as such should win the approbation of all. At the same time there are certain matters which I feel are not quite explicit or in which changes are required, if this constitution is to conform to those ideals which actuated India during its many years of struggle and which are embodied in the Objectives Resolution to which our Prime Minister referred yesterday. Sir, I agree with my Honourable friend Dr. Ambedkar that it is the spirit in which the Constitution is worked that really counts. I feel that whatever the paper Constitution may be it is the spirit in which we are able to work it, that will make all the difference. Again, whatever constitution we may draw up today, it will not be possible for us to foretell how it will fit in with our requirements in its actual working and with the inherent genius of our race. It is therefore quite essential, as the Prime Minister said yesterday, that the Constitution at present should be flexible. I think amendments of the Constitution should be by simple majority for the next ten years so that there may be opportunities for adaptations and modifications in the light of experience.

Turning to the citizenship clause, I think there should be a categorical statement in it about a single uniform citizenship with equal rights and privileges. As rights involve responsibilities, so it is necessary that the obligations of citizenship should also be enumerated in this Clause.

With regard to Fundamental Rights, equal rights have been prescribed. Quite rightly, it has been laid down that the State shall not discriminate against any citizen on grounds of religion, race or sex. But in view of conditions in this country and in view of some of the opinions expressed by the

public—and the last speaker's chivalry touched us deeply—I think it is necessary to have an explicit proviso that social laws of marriage and inheritance of the different communities shall not also have any disabilities attached to them on grounds of caste or sex. It is of course true that the right of equality includes this but there may be different interpretations and much confusion and I therefore appeal to the House to have a proviso to explain this.

I will not repeat what my Honourable friend Shri Ananthasayanam Ayyangar said but I do feel that in regard to the economic rights of the common man there is a lacuna. Although I agree that the provision "that no person shall be deprived of his property save by the authority of the law" is alright, I do not at the same time see why under justiciable rights one should have the second part of this clause which goes into details about compensations when property is taken by the State for public purposes in accordance with law. Surely if there is any need for putting this into the Constitution it should be under directives and not under rights which are justiciable and enforceable in courts of law. It is not right that we should commit the future to the economic structure of the present.

Turning to education, which I consider to be one of the most fundamental of rights, I feel there is a great in adequacy. I do not want to repeat what other speakers have said, but I would appeal to the House to include a proviso whereby a definite proportion of the budget is allotted for this purpose. This is nothing very new; it is already there in the Constitution of China which says:

"Educational appropriations shall set apart not less than 15 per cent of the total amount of the budget of the Central Government and not less than 30 per cent of the total amount of the provincial, district and municipal budgets respectively." If we are to progress and prosper I suggest that in the matter of the two nation-building services of education and public health there should be some provision in the Constitution of the type that is there in the Chinese Constitution.

With regard to the reservation of seats for minorities we have not of course in a secular State provided for separate electorates, but I do not see why we should have reservation of seats for minorities. It is psychologically wrong to lay down, as it has been laid down, that after ten years the right shall lapse unless extended by amendment. I am sure that if this privilege is conceded now there will be a clamour for its extension. It is not fair to these minorities; it is not self-respecting for them. If the House wants to ensure representation for minorities I would suggest multiple constituencies which cumulative voting. Some speakers have suggested proportional representation by single transferable vote. I think that is a difficult procedure particularly for India and I would not recommend it. But I think that multiple constituencies with cumulative voting has a great deal to recommend it. In the first place, it will give much better representation not only to these minorities but to others; and it will also be a method of ensuring representation to the minorities without creating a separatist tendency. The last speaker Sri Rohini Chaudhari the erstwhile champion and defender of women who is against removing their social disabilities spoke about special electorates for women. All along the women of India have been against reservation of seats or special electorates. Before the 1935 Act came in we were against it and put forward our views in no uncertain terms, but it was forced upon us; and today, in spite of the chivalry of the previous speaker, Indian women will not tolerate any such reservations in the Constitution. I will not repeat what others have said about village panchayats. I feel that freed from the shackles of ignorance and superstition, the panchayat

[Shrimati Renuka Ray]

of the Gandhian village will certainly be the backbone of the structure of this country's Constitution. I do not think there is anything in the Constitution that can bar it.

Coming to the allocation of powers between the units and the Centre, I think we must approach this subject dispassionately. There is a great deal to be said for giving as much provincial autonomy as possible. At the same time, where a country has a tremendous leeway to make up, particularly in the nation-building services, the unifying force must be strong and the Centre should be given some power of a supervisory and coordinating character, in regard to both Education and Health. I do not think the provinces should be crippled by taking away from them certain financial securities. They should at least be given 60 per cent of the income-tax according to the recommendations of the expert committee, 35 per cent on the basis of collection, 20 per cent on the basis of population and 5 per cent for hard cases. This is a very good recommendation and I hope this House will agree to embody it in the Constitution. I also feel that a Financial Commission should be set up immediately and not after five years.

Before I conclude, I wish to say something about linguistic provinces. Unity must be our watchword today and it is a fatal mistake to allow realignment of provincial boundaries on a linguistic basis at this juncture of our country's history. It has already led to much bitterness and strife and will lead to more. There is no justice or logic if such a thing is allowed in one part of the country and not in others. For instance if you allow a province of Maharashtra to be formed, naturally there will be other parts which will want it. There is in Bengal a feeling of great bitterness that she who has sacrificed part of her territories so that the transfer of power could take place should be denied her rights, now. It was because of the political expediency of the British and to suit the purposes of an alien Government that Bengal was forcibly deprived of much of its territory when the movement for the freedom of India started here. I do not subscribe to the theory that we should have a reallocation on a linguistic basis at this time. If it is to be done at all it should be done after ten years when passions have subsided. In any case, for administrative purposes there is no need for a linguistic realignment. Linguistic minorities in every province should have a guarantee that they will be given education in their mother tongue. I would urge that the Linguistic Boundary Commission should stop work or in any case it should be put off for ten years. I repeat that the overriding consideration is that of unity, if we want that India should be strong and prosperous and should take its rightful place in the comity of nations.

The Honourable Shri Ghanshyam Singh Gupta (C.P. and Berar : General): Sir, it has been said that the language of the Union should be simple Hindustani, that the language of the Constitution, the language on which we shall frame our laws, should be Hindustani. I was in search of this simple Hindustani. I could not find it in C.P. I could not find it in the law books. I could not find it even in the official proceedings of this August House. The official proceedings of this House are published in three languages: English, Hindi and Urdu. I read English, I read Hindi and I got read Urdu with the idea that I might be able to find what they call simple Hindustani. I could not find it. Urdu was Urdu and Hindi was Hindi. There was no such thing as simple Hindustani. I thought that I might find it in the newspapers. 'The Tej', Limited, the Jubilee of which was celebrated the other day, publishes news in two languages, one in Hindi called 'the Vijay' and the other in Urdu, called 'The Tej'. I compared the languages of these two also. I could not find simple Hindustani. I would not waste the time of the Honourable House by

reading from these publications. I have got a copy of 'Vijay' in my hand. It is all Hindi in 'Vijay' and all Urdu in 'Tej'. I found two books, elementary text in Delhi may have simple Hindustani. I found two books, elementary text-books in Geometry (rekhaganit). I could not find simple Hindustani in them also. I also looked at the Elementary Arithmetic books and also Elementary Geography. I could not find there what they call simple Hindustani. They were all either Urdu or Hindi. I shall give you a few illustrations. Now, Sir, in elementary arithmetic multiplication we call गुणन (gunan) in Hindi. It is called ज़रब (zarab) in Urdu. Multiplicand is गुण्य (gunya) in Hindi, while it is मजरब (mazarab) in Urdu. Multiplier is गुणक (gunak) in Hindi and it is मज़रबफी (mazarbafi) in Urdu. Product is गुणनफल (gunanfal) in Hindi, while it is हासिल-इ-जरब (hasil-i-zarab) in Urdu. Divisor is भाजक (bhajak) in Hindi. It is मकसूम इलाह (maksum-i-lah) in Urdu. Dividend is भाज्य (bhajya) in Hindi. It is मकसूम (maksum) in Urdu. Quotient is भजनफल (bhajanphal). It is खर्राफ-इ-किस्मत (kharf-i-kismat) in Urdu. L.C.M. is लघुत्तम समापवर्त्य (laghuttam samapvartya) in Hindi. It is जुआजाफ-इ-अकल (zuazaf-i-aqual) in Urdu.

I can multiply illustrations. I now take up elementary geometry. Radius is त्रिज्या (trijya) in Hindi. It is निस्फकुतुर (nisfakutur) in Urdu. Isosceles triangle is समद्विबाहू त्रिभुज (samadvibahu tribhuj) in Hindi. It is मुसल्लस मुसावि-उल-साकेन (musallas-musvai-ul-sakin) in Urdu. Equilateral triangle is समतृबाहू त्रिभुज (samatribahu tribhuj) in Hindi. It is मुसल्लस मुसाब-उल-जिला (musallas-musavi-ul-zila) in Urdu Right-angled Isosceles triangle is समकोण समद्विबाहू त्रिभुज (samkon samadvibahu tribhuj) in Hindi. while it is मुसल्लस मुसाविउस्साकैन कायम-मुज्ज़बिया (musallas musavius-saquan quamuzzavia) in Urdu.

I can quote hundreds of such illustrations. I could not find simple Hindustani even in these elementary text-books. I felt somewhat puzzled when ladies and gentleman loudly proclaim that they can have simple Hindustani for our laws. It is only in the bazaar that I could find simple Hindustani. When we cannot have simple Hindustani even in the elementary school-books, how can our laws be made in it? I have done, Sir.

Shri Mahavir Tyagi (United Provinces : General): I thank you very much, Sir, I have been waiting for the last three days to speak on this Draft Constitution. I am glad you have permitted me to speak for a few minutes.

I must start by thanking and congratulating the Drafting Committee for the high level of legal language and phraseology which they have used in the Draft from beginning to end. I do not want to criticise the Drafting Committee. They have done their work very efficiently. They have collected together bits of the principles of Constitution that we lay before them in irregular instalments, and have given us a complete picture for our review.

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Sir, when we sat for the first time to draw a picture of the Constitution of India, we had a blank canvas a face and many of us did not actually know which side to start from and what colour to fill. It is all due to the ability of these talented lawyers that we have now got a complete picture to look at. When you wish to judge an artist's work, you should take the opinion of a layman. If it appeals to the layman, it must be good. That is my criterion. The lawyers have finished their work and the complete picture is before us. I, as a layman, want to put before you my ideas about it. The circumstances have changed from what they were when this work was entrusted to the Drafting Committee. It is very unfortunate that, in the history of India, the lamp which lit our hearts with pleasures of freedom was put out suddenly and we were steeped in sorrow. Then again, populations have changed and the whole face of the country has changed. The ideology also has changed to a great extent. Now to give that old picture on the canvas will be making the picture a back number. We must keep in mind today the present environments, the present conditions and the growing ideologies. So, Sir, we must examine the picture in the light which gave us freedom. In fact, we must examine it from the point of view of Gandhiji, through his eyes. His eyes are not with us, but still there are persons in this House who have the glimpse of his eyes. We can all recollect what Gandhiji thought about Swaraj. It must not be forgotten that this Constituent Assembly is the fruit of the labour of those who worked day and night for about thirty years in their attempt to win freedom. It is their achievement. It is they who should have given us the Constitution. They alone are competent to draw up the Constitution. The Constitution should have been the work of revolutionaries alone. But since this Assembly has been constituted by the British, we cannot think of the other possibilities and it could not be purely a Gandhian Constitution altogether. I admit this. But again, we are in the majority and we should see to it that the Gandhian outlook does not vanish from the country so soon after his death.

In this Constitution, I must confess, I am very much disappointed. I see nothing Gandhian in this Constitution. It is not the fault of the Drafting Committee. It is our own fault. When we decided upon the principles of this constitution we gave them certain basic principles to work upon. But conditions have since changed. When we decided about the representation of communities, language and other controversial matters we had to reckon with the reaction our decisions would have in Pakistan. Now the situation has totally changed. Pakistan has been freed of its minority problems altogether; there those problems have vanished. Here also the thorny and the horny ones have migrated away from India; those who fought us under one pretence or the other have forsaken their mother-country and have gone over to the other side, and have adopted a step-mother. We have with us now only those Muslims, Sikhs and others who want a united India. India is united today and therefore the Constitution must be suitable to the present set-up of things.

So, Sir, from the Gandhian point of view when I look at this picture, I find one thing very prominently lacking. Gandhiji had always been keen on total prohibition in the country, but the Constitution does not say a word about it. Our promises to the electorate on this issue have been fulfilled only in Madras and in some other provinces. Gandhiji was anxious that in India as a whole there should be complete prohibition. I would suggest that this idea of Gandhiji should be taken in before we sign this Constitution.

Then, Sir, Gandhiji was very keen on cottage industries to be organised on the basis of self-sufficiency. This item had a top priority in his 'constructive programme'. Here this is also lacking. I am an orthodox Gandhite and surely I am not a socialist and so I do not want to wipe away all the big industries. In the context of things today, the various industries in the country are very helpful, but if and when they are to be abolished, they should be abolished *en masse*. You cannot bring in socialism by stages, by socialising one industry after another. When socialism comes, it should cover everything, all at a time. If total socialism comes all of a sudden, there will be no loss to anybody, because the loss sustained by anybody on one count will be made upon the other count, because all property becomes absolutely a socialised property. To say in the Draft Constitution that people shall not be deprived of their property without adequate compensation means that India will ever belong to the vested interests. Today there is not even a blade of grass which does not belong to somebody or the other. There is not even one particle of sand which does not belong to somebody or the other. According to this Constitution, if the future generations want to socialise all property and all means of production, then every particle of sand and every blade of grass will have to be compensated for. I want to know, wherewith will they compensate this total wealth: it would all be in the hands of individuals who will demand compensation. So, compensation will be impossible. Gandhiji had said that the wealthy should consider themselves only as custodians of wealth. He never went to the extent to which we are going in this Draft Constitution. I therefore tell you, Sir, that before we sign this Constitution, we should see that we do not sow seeds of a bloody revolution in India. Only if revolution is meant to be avoided we should let the door remain open for coming generations, if they ever so desire, to socialise all vested interests and all means of production in the country. If we shut the door as we have done against future socialisation, by our Article 24(2), I submit, the youth of India will rise and knock at the door and smash it and the result would be a bloody revolution, (*cheers*). Therefore, Sir, I would plead that we should scrap this sub-clause altogether and make it possible in future for the Parliament to socialise all property and all means of production without being compensated for. It is also a sort of mistake, Sir, to say that we are a sovereign body. I do not think we are a sovereign body in the sense in which a Constituent Assembly should be. The sovereignty that we enjoy is the sovereignty that the British enjoyed in India: It is a transferred sovereignty. Real sovereignty will belong only to the Parliament which comes after the introduction of adult franchise. That Parliament must therefore be more morally and constitutionally competent than us to decide issues of this nature.

I then come to the question of minorities. I am sorry that Dr. Ambedkar made the statement that minorities are an explosive force which if it erupts can blow up the whole fabric of the State. I say that these minorities can do nothing of the sort. The reason is simple—they are not factual, they are a mere fiction having no existence. I throw them a challenge. They have no right to be separately represented here. Whom will they represent? The fiction of minorities was a British creation. The Scheduled Castes are not a minority at all, simply because a few castes of the poorer classes have been enumerated together in a schedule, they have become a "scheduled minority". This minority is a mere paper minority. It is being perpetuated now because some of the opportunist families among them want to reserve their seats in the legislatures. Those people who took pleasure in calling themselves a minority have migrated away from here. It is only those who believe in one State that remain. Therefore, Sir, there is no minority now and there should not be any provision for minority representation here, because this has proved ruinous to the so called minorities themselves. Take the Muslims. I had

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seen in Dehra Dun personally, and I know what their reactions are. They are an absolutely demoralised people today. Even the ordinary rights of citizenship they are not morally free to enjoy. They are so cowardly today that they cannot stand erect in India because of the wrong lead they had followed in the past. Therefore, Sir, I would ask the Scheduled Castes, the Sikhs, the Muslims and the other minorities and for the matter of that even Hindus not to ask for any kind of reservations for them. We are a secular State. We cannot give any recognition or weightage to any religious group of individuals. I could understand their claims as majority or minority if they, had belonged to different races. Beliefs or creeds are a purely individual affair. I also refute Dr. Ambedkar's claim that the majority in India is "basically a communal majority". The majority party is Congress, which is purely political.

Then, Sir, a word about the villages. Dr. Ambedkar said that he was happy that the "Drafting Committee has not accommodated the village". He characterised it as "a sink of localism and a den of communalism". It is these sinks of slavery that were facing all sorts of repression in the freedom struggle. When these sinks of slavery that were being charred, burnt and tortured in Chimoor, the pyramids of freedom were applying grease on the back of the Britishers. Unless I raise my voice against the remarks which Dr. Ambedkar has made against villages, I cannot face my village people. Dr. Ambedkar does not know what amount of sacrifice the villagers have undergone in the struggle for freedom. I submit, Sir, that villagers should be given their due share in the governance of the country. If they are not given their due share, I submit that they are bound to react to this. I thank you, Sir.

Shri B. Pocker Sahib Bahadur (Madras : Muslim): Sir, I am very thankful to you for giving me this opportunity to speak a few words on this motion. In the first place, I would just like to refer to the question of language. When I first entered this august body, I felt myself to be under a very great disability that I was not able to follow the proceedings that were going on. Then I found that a very considerable section of this House was in the same unfortunate position as myself and the idea struck me that the Constituent Assembly, which is going to determine the destinies of millions of this country for ever, is conducting the proceedings in a manner which does not bring credit either to this Assembly or to the nation. We have been going on speaking about very important and vital subjects without every one of us understanding each other. That is really a very unfortunate position. I raised my cry against it, but I must say that I did not succeed. Even now the disability continues, even though to a lesser extent and I am glad that, at any rate, there was some abatement in the matter of the extent to which that disability is suffered by us.

Now, Sir, in the Draft Constitution, provision is made that the official language shall be Hindi and English. I submit, Sir, that this also will create an anomaly. No doubt provision is made that arrangements may be made for giving the substance of all the speeches of one language in the other language, but to what extent and what is the method to be employed for that, it is yet to be provided for. I submit, Sir, that it is very necessary that for some reasonable period, it may be ten years, it may be fifteen years,—that is a matter of detail—there should be a provision that the official language should continue to be English. We have no reason to hate the English language. As a matter of fact we ought to be grateful to the culture that we have imbibed from that language. In fact for a great deal of our agitation for freedom and the freedom that we have obtained large contribution has been made by

the English language and by the culture which we imbibed from that language. Therefore, I do not think that there is anything which we should hate in that language; and particularly, when we have attained our freedom, we are entitled to adopt best from any nation from any part of the earth. I shall also say that there is no proprietorship in language. The English language cannot be claimed by the Englishman as their own with any exclusive right for themselves nor can we claim Hindi as the exclusive language for ourselves. There are several languages in the world and therefore we are entitled to use every language. So we are entitled to use the English language and we must adopt it until we are in a position to have one national language known to the generality of the public of this country. Until that position is attained, we must continue English as the official language so that every one who assembles in the Parliament may understand each other. Of course, there may be some stray cases in which the representatives may not be acquainted with English, but a very large majority of them will be acquainted with English and therefore, I submit, Sir, that the English language must continue to be the official language at least for fifteen years, by which time the nation may be prepared to have a national language for themselves.

Now, Sir, coming to the question as to what that national language should be, that is a matter to be decided by this august body. I must say at the very outset that I am not acquainted either with Hindi language or with Urdu language or with Hindustani. Therefore, I am taking a dispassionate view of the matter. It is very difficult to say that it is possible for the people of this country to learn Hindi overnight. No doubt we must have a national language, but we must prepare the nation for it by making provision for their learning that language. Now if Hindi is to be made compulsorily the official language, the question will arise in the elections by adult franchise that knowledge of Hindi should be the primary qualification of a candidate for election. I think it will be detrimental to the interests of the country, if that happens, and the knowledge of Hindi becomes the criterion in electing their representatives.

I do not want to dwell more on the subject as the time at my disposal is very short. I would only submit this. My suggestion is that this august body should decide in favour of Hindustani for no other reason than the fact that it is the solemn testament of Mahatma Gandhi, the father of the Nation. He was one who was well acquainted with this controversy about these languages and he knew what the Nation was and it is after mature consideration that great man has suggested that Hindustani with the Devnagari script and the Perisan script should be the official language and I hope that this august body will really revere the memory of that great man by deciding on Hindustani with Devnagari and Urdu script as the official language.

Now, Sir, if we do not abide by his advice, the world might say that after all the devotion and reverence we show to Mahatmaji is a lip-reverence and a lip-respect and it is not deeper than that. Let us not give occasion to the world to say that our reverence for Gandhiji is only lip-respect. Let us not allow ourselves to be accused of the grave charge that soon after the death of Mahatmaji his views and wishes were buried nine fathoms deep. At least for the sake of his memory, I appeal to you, Sir, and to all the Members of this body to vote upon Hindustani as the official language.

Now, Sir, I would just like to deal with another question, and that question is about the freedom of person. Recently we have heard so much about the power of promulgating ordinances that is being exercised by the various Governments. Particularly I am fully aware of the circumstances under which the Ordinance rule was enforced in the Madras Presidency. The legislature was in session. All on a sudden, it is prorogued one evening and the next morning there comes this bomb of an Ordinance, even taking away the powers of the

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High Court to issue writ of *Habeas Corpus* under section 491 of the Criminal Procedure Code. I refer to this fact in order to show that if the power of making an Ordinance is preserved, there is every likelihood of the power being abused and the liberty of the subject being dealt with in a very reckless way. In pursuance of these Ordinances, hundreds and thousands of innocent people were arrested and kept in custody as if they were chattel, without their even being told what the charge against them was and why they were detained even as required by the very Public Safety Act. In this connection, I would only request this House to see that the powers of the High Court are not in any way taken away with reference to saving the liberty of the subject. Neither the legislature nor the Government should be allowed to pass any law or Ordinance which takes away the power of the High Court to protect the liberty of the subject. That is a very fundamental point. We were crying hoarse when the Britishers were ruling that they were keeping in custody persons without bringing them to trial. I say this is a sacred right and it must be provided in the Fundamental Rights that no man, to whatever religion, or to whatever political creed he may belong, shall be arrested or detained except after trial by a court of law. This is a sacred right of which a citizen should not be deprived. It is said emergencies may arise; even when emergencies arise, there must be power in the High Court to see that the man is brought to trial and he must be kept in detention only after proper trial. No power should be given either to make any laws or to make any Ordinance to enable the Legislature or the Government to deprive the citizens of their personal liberty without his being brought to trial before a court of law. I would therefore request this Assembly to see that provision is made in the Fundamental Rights that the liberty of every subject is protected and no man should be incarcerated without being brought to trial before a court of law.

One word more, Sir, and that is about the salary of the High Court Judges. This morning when the memorandum submitted by the Chief Justice of the Federal Court and of the Chief Justices of the various High Courts was circulated to us, I realised on going through that memorandum that they have made out a very good case for maintaining the present salaries. The salaries were fixed about 70 years ago. After that, everything has gone only in favour of retaining it and all circumstances are against reducing the salaries. The purchasing power of the Rupee has gone down; income-tax has been increased; modern life has become more costly. In order to maintain their dignity and to keep the Judges beyond temptation, it is very necessary that the present salary of the High Court Judges should be maintained, without being reduced.

Just one minute more, Sir. I shall just mention the point. I have maintained that the only way of protecting the rights of the minorities is by giving separate electorates. I do not want to develop the point further. I know the matter has been discussed in this House before and the House was against it. I know the House will be against it even now. I am giving my honest feeling that it is the only rightway of protecting the rights of minorities and I would appeal to the House to consider the question dispassionately. If for any reason that is not practicable, and if the House thinks that it cannot agree to that, reservation is absolutely necessary. I do not want to go in to the reasons. In any case reservation of seats has to be retained. Election by proportional representation by the single transferable vote, or the creation of multiple constituencies with cumulative voting, may be some of the other remedies. I would only say that separate electorates is the proper remedy and the right method of giving protection to the minorities. In any case, if that is not practicable, reservation must be there, or in any case, the other

methods may be tried. Election by proportional representation by single transferable vote will be a rather complicated method; otherwise, I would have preferred that.

I thank you, Sir.

Shri L. Krishnaswami Bharathi : (Madras : General): Mr. Vice-President, Sir, coming almost at the fag end of the discussions, I do not think I have anything novel or new to traverse. However, I felt I should discharge my duty by giving certain views of mine.

Dr. Ambedkar deserves the congratulations of this House for the learned and brilliant exposition of the Draft Constitution. No congratulations are due to him for the provisions in the Draft for the simple reason they are not his. Honourable Members may remember that most of the clauses in the Draft Constitution were discussed, debated and decided upon in this House. Only a very few matters were left over for incorporation by the Drafting Committee. The House, however, would tender its thanks for his labours inputting them in order.

I am sorry, Sir, that Dr. Ambedkar should have gone out of his way to make certain references and observations which are not in consonance with the wishes or the spirit of the House, in regard to his references to the villages, and his reference to the character of the majority and 'constitutional morality'. Honourable Members have referred to the question of villages. I only wish to add this: He says: "I am glad that the Draft has discarded the village and adopted the individual as its unit." I would like to ask him where is the individual apart from the villages. When he says that the villages have been discarded and the individual has been taken into consideration, he has conveniently forgotten that the individuals constitute the village; and they number about ninety per cent of the population, who are the voters.

There is another matter which has been referred to by him; that is in regard to the character of the majority. He says, "the minorities have loyally accepted the rule of the majority which is basically a communal majority and not a political majority." I do not know what he has at the back of his mind. There was only one party which functioned on the political plane and on the Governmental plane, the Indian National Congress, which was entirely a non-communal organisation and a political party. And yet Dr. Ambedkar says it is 'basically a communal majority', which is not true in fact. I must say it is wrong, mischievous and misleading. I want to touch upon four points, *viz.,* the form of Government, the minority question, the language question and adult franchise and elections. I know with the limited time at my disposal I cannot develop those points at any length. However, I would like to touch upon certain aspects of the matter.

The Draft Constitution, Dr. Ambedkar said, is federal in composition. A careful reader of the whole Constitution would find that it is more unitary than federal. If I am to express my idea in terms of percentage, I am inclined to think it is 75 per cent unitary and 25 per cent federal. Many Honourable Members spoke strongly on the need for a strong Centre. I do not think there was any need for this kind of over-emphasis, for it is an obvious thing that the Centre ought to be strong, particularly in the peculiar context of the circumstances prevailing in the country. But I am afraid they are overdoing it. I feel a strong Centre does not, and need not necessarily mean a weak province. An attempt seems to be made and I find there is a tendency to over-burden the Centre and there is a tendency towards over-centralisation. I am glad Dr. Ambedkar has given a kind of warning. I am inclined to think that in actual working of the Constitution this course of taking

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more powers over to the Centre will be a fruitful source of friction. After all let it be remembered the strength of the chain is in its weakest link and the provinces should not be considered as a rival Governmental organization. The Centre is trying to chew more than it can digest. I find in the transitory provision there is an attempt for the first five years to take over even the provincial subjects. It is for the House to decide how far we can allow that.

Sir, coming to the minority question I am very happy to find that members belonging to the minority community are now coming round to the view that it is no good to have this kind of communal electorate even though in a diluted form in the form of a joint electorate. I am happy that Begam Aizaz Rasul has discarded this and does not want the separate electorate. Mr. Karimuddin also said the same thing but he wanted what is known as proportional representation through single transferable voting system. I am sorry to say that it is an attempt to come by the back door or side windows what is denied by the front door. This is not very proper and the suggestion that it may be done by proportional representation is absolutely unworkable and impractical, particularly in general elections where large masses of men and women who happen to be illiterates are concerned. Honourable Members may know that in that system the voter has to put numbers as 1, 2, 3 etc. against the names of candidates and it is very difficult and impracticable and therefore it is no good; and as Dr. Ambedkar said the minorities must trust the majority. There is one fundamental fact to be remembered. I am glad Mr. Tyagi emphasized that. Community should not be made the basis of civic rights. That is a fundamental principle that we must remember. In a secular State the right to representation is only the right to represent a territory in which all communities live and if a member is representing in the Assembly, he has the right to speak on behalf of all those living in the territory, of all communities and classes, men or women. That should be the idea with which we must function. I must take this opportunity of expressing my great appreciation of some minority communities who have been nationalistic throughout and who have not clamoured for special provisions only on the basis of birth or community. I refer to that community to which you, Sir, Mr. Vice-President, have the honour to belong. I have had opportunities of coming in close contact with Christian friends and throughout they have not demanded any kind of separate electorate or special provisions, and I am happy over that. If some members of minority community now do not want reservation, I may not give all credit to them as they are only making a virtue of necessity—this great Christian community have never asked for special considerations. They have all along been of the view that special electorates are no good and after all we must all live together and I am glad the Parsee community also had not wanted this special representation.

Then Sir, one Honourable Member wanted reservation in services. I should think though it is not undiluted nationalism, we must for some time to come give them reservation in services also. But one thing you must have clearly in mind. There must be a time limit for all these peace or compromise moves and you must make it clear that after the lapse of a certain specified period all these special provisions must go. I particularly support Mrs. Renuka Ray's suggestion that the last portion in Article 306 where it is stated that after 10 years this may be continued may be removed. We must give our view emphatically and definitely that it is only as a necessary evil that we are tolerating reservations on communal basis.

I want to say something on the language question. Much trouble arises on account of not properly defining what is exactly meant by national language. There is no doubt whatever that India must have a national language but you must remember that India is not entirely a country with one language existing

at present, and I am glad to find that the Draft Constitution has steered clear of all these controversies. They have simply said in Article 99 that in "Parliament business shall be transacted in English or Hindi". That is all. I do not think that the House need go into this question at present, as our Prime Minister said, to deciding upon a National language here and now. If at all we must have, let us have a language for the Central Government and then it must be made clear beyond a shadow of doubt that in the provinces the provincial languages and respective regional provincial languages shall be the official language for the territories comprised in the province. If that point is made clear beyond a shadow of doubt, much of the heat and much of the controversy will disappear. Let it be definitely understood that the regional language shall be both, in the legislatures and in the High Courts of the Provinces.

Sir, I have only one point more if you will give me two more minutes. That is regarding the election under adult franchise. Much doubt and apprehension is entertained in the minds of big constitutional experts like Mr T. R.Venkatarama Sastry of Madras about the efficacy of adult suffrage; but it is decided and we cannot go back on it. But the most important point that I want to emphasize is that the elected representatives must truly reflect the will of the people. Unfortunately, Honourable Members know how elections are conducted. Today we find from the papers an Honourable Member of this Constituent Assembly went to poll to cast his vote at an election. He is told: "Your vote is already cast." That is nothing surprising. That is happening on a large scale everywhere. I stood for election in 1937 and in two or three elections I was personally interested. I knew actually twice the actual number of votes were not polled correctly. Some arrangement must be devised by which this sort of corruption at elections must be stopped. I have a suggestion and I shall place it before this House for consideration and leave it at that. Every voter must be given what is known as an identity card. The identity card may contain—it is a matter of detail what the identity mark should be. I would very much like a photo of the voter to be put in a card which he might carry. In the post office we are given what is known as identity cards on a payment of Re. 1. Our photo is put there and wherever we go we can carry it. If such a system of something similar to it is done, the voter must first present this identity card and on presenting it he will be given the ballot paper and then he will exercise his vote. I am prepared to discuss the details. This arrangement will be a great boon. If this suggestion is taken up and put in the appropriate place, I have no doubt that the elected representatives would reflect the true will of the people.

Shri Kishorimohan Tripathi (C. P. and Berar States): Mr. Vice-President, Sir, there has been sufficient discussion of the Draft Constitution and I have been very carefully listening to the criticisms. There have been two types of criticisms. Some of the critics have criticized themselves rather than the Drafting Committee. They took certain decisions and all those decisions were embodied by the Drafting Committee and where the Drafting Committee wanted to make its own suggestions it underlined the Draft and has tried amply to draw the attention of the House to the suggestions and changes that it wanted to make. Critics have criticised and in doing so, they have indirectly criticised their own decision. There has been another type to criticism which has gone rather astray and critics have tried to bring in things which we need not discuss while discussing the constitution of a country. I would not now go into the details of the Constitution, into the nature of the Constitution, into the economic or other provisions of the Constitution. Much has been said on those issues. But I tried to find out the place of the Chattisgarh States in the Draft Constitution; I looked into the Schedule enumerating the various units of administration and found their names nowhere; whereas as a matter of fact the administration of these States has been integrated with

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that of C. P. and administrative units,—Districts,—have been carved out of these States. I do not know why these States have not been treated as a part and parcel of the province of C. P. in the Draft Constitution. I would request for this change; and when I say so I however do not want to say that as a result of this integration the people have felt something very advantageous. In the transitory stage of integration, there have been a lot of difficulties to people. They have, in fact, suffered. Their conditions have become rather worse, but I believe,—and believe honestly—that all those are only passing phases and they will go and in the long run these small States when merged and integrated with C. P. would derive their own benefit. They are not in a position to form a Union in any way; they have not got sufficient economic and other resources to develop themselves and therefore in no case should they be treated separately. Secondly, I will draw the attention of the House to the necessity of including co-ordination of agricultural development and planning in respect of food, its procurement and distribution, in the Union list as a Central subject. When I say so, I want to draw the attention of the House to the reply the Honourable Minister for Agriculture gave while replying to questions in the House when functioning as the Assembly that for want of proper provision or power it is not possible for the Centre to deal effectively with the question of agricultural development of the country. When we think of the reconstruction of the economy of India, the first and foremost thing that should strike our attention is the agricultural economy in India. If you want a planned development in India including agricultural economy, it is essential that agriculture—its development and planning—should find a place in the Union List rather than in the Provincial List. The food problem in India is very grave. It is going to be a serious problem for years to come and we have been spending most of our dollar and other exchange in getting imports of food from foreign countries and this has withheld and will be withholding our industrial development to a large extent. It is therefore very essential that a country-wide planning to develop agriculture to an extent where we can be self-sufficient in the matter of food should be treated as essential. I would therefore request the Drafting Committee to take into consideration this suggestion of mine and place the co-ordination of agricultural development as a Central subject. I am sure that the attention of the Drafting Committee has also been drawn to this subject by the Ministry of Agriculture also.

Then, I come to the question of India and her relationship to the Commonwealth. This question has yet been left undecided although references in the papers and in the speeches of Members have been made to it. I for one would like that India must declare herself an Independent Sovereign Republic. We should make no mention of our association with the Commonwealth in any part of the Constitution itself. Having declared herself a free and independent nation, India should then go to seek her association with one bloc or the other; but jumping from the present position of a Dominion to the relationship of the Commonwealth will inevitably mean that we are going to remain still a dependent country, dependent to the Commonwealth and the King of England.

Taking next the question of election in villages, much has been said about villages. There has been very sharp criticism of the view expressed by Dr. Ambedkar when he said that "the villages are dens of ignorance". There has been ruthless criticism. I know this criticism is because of a genuine feeling on the part of the House. The House desires that the villages should come forward and play their full part in the national reconstruction. Since the desire is very genuine, I would request the House to detail out the election procedure in the Constitution itself. While giving adult franchise to every citizen of India, the eligibility for election to legislatures should be restricted

to such persons as neither pay income-tax nor hold land in excess of 100 acres. That, I am sure, would bring in most of the villagers to the legislatures and they will be able to play their best role.

I now come to the question of the linguistics provinces. It is said in examining this question that the redistribution of provinces is essential only on the ground of language. That is a wrong theory to my mind. A province should be formed or carved out of India, bearing in mind its economic resourcefulness, so that it could give full opportunity of growth to every citizen in it. The discussion of linguistic provinces, the appointment of a Commission to consider the question only on the basis of language, has already created a sort of wild feeling in the country and even in the political parties this tendency has taken place. I heard the other day that the States of Manipur, Tripura and a district of Cachar are demanding themselves to be a separate province in the Congress body. There are other small unions who desire to continue to be separate units. This is very harmful to the nation and must be prevented.

Then coming to the question of language, I am one who wants that Hindi should be accepted as the national language of India, but when I say so I do not mean the Hindi which we find in the translation of the Draft Constitution.

Mr. Vice-President : The Honourable Member has already exceeded his time.

Shri Kishorimohan Tripathi : Well, Sir, as I have no time, I close with these few words. I support the motion moved by Dr. Ambedkar.

Shri Vishwambhar Dayal Tripathi (United Provinces : General) : Sir, it is with a certain amount of hesitation that I am going to speak before you in English. It appears that a sort of misunderstanding has been created amongst a section of our Friends, particularly those from Southern India, that we speak in Hindi because we want to shut them off from our own ideas. I must assure them that it is not a fact. The real fact is—and I want to say so quite frankly—that we can express our ideas ten times better in Hindi than in English. This is the only reason why some of us always speak in Hindi. But in deference to the wishes of those friends I am going to speak in English.

To come directly to the subject matter, it has been a formality with almost all the speakers to congratulate the Members of the Drafting Committee and its Chairman on the labour they have put in and also on the merits of the Constitution. I would not undergo that formality. There is no doubt, of course, that they have put in a good deal of labour and have placed before us a complete picture of a Constitution on the principles that we laid down in this Constituent Assembly. I am also aware that there is a good deal of merit in the draft Constitution. They have no doubt thoroughly studied the constitutions of different countries and have tried to make a choice out of them and to adapt those constitutions to the needs of this country. This is the chief merit of this Draft Constitution. In one word, it is an 'orthodox' Constitution.

But along with its merits we have also to see as to what are the defects or demerits and omissions in this Draft Constitution. We should then try to remove those defects and omissions.

Before I point out these glaring defects and serious omissions, I would like to draw your attention to certain observations made by the Mover of the Draft Constitution. I would not go into unnecessary details, because those points have been effectively dealt with by a number of previous speakers. But I cannot refrain from making certain observations. The one thing—and to me it appears very objectionable—which I wish to reply to is Dr. Ambedkar's remark that the Indian soil is not suited to democracy. I do not know how my friend has read the history of India. I am myself a student of history and also politics and I can say with definiteness that democracy flourished

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in India much before Greece or any other country in the world. The entire western world has taken democratic ideas from Greece and it is generally regarded that Greece was the country where democracy first of all flourished. But I say and I can prove it to the hilt that democracy flourished in India much earlier than in Greece. I shall not go into the facts and figures, yet I would draw his attention to two or three points with regard to this matter. He might remember, as I know he has read history and he is also a scholar of Sanskrit, that even during the time of Buddha, democracy flourished in India. It is an oft-quoted phrase which I want to repeat here and it is this: that certain traders went from northern India to the south. The King of southern India asked them as to who was the ruler of northern India. They replied: "Deva, Kechiddesha Ganaadhinah Kechid Rajaadhina" (देव, केचिद्देश गणाधीना केचिद राजाधीना:) It means: some of the countries in the north are governed as republics, while there are others which are governed by kings.

Then, coming down to the period of Alexander, we find that the historians of Alexander have praised very much the city-states of northern India which were governed on democratic lines as republics. There is no doubt that later on the course of political development was arrested for sometime on account of invasions from outside. Yet we find that the same democracy continued to function in our villages under the name of village republics. This, the Mover himself has admitted in his address. It is very unfortunate that he should have made such remarks as are not borne out by the facts of history.

As regards the defects in the Draft-Constitution I would now draw your attention to the Objectives Resolution itself. Even that has been sought to be changed. The word 'Independent' has been sought to be changed into 'democratic' and the word 'republic' has also been sought to be changed into 'State'. I think the Drafting Committee should not have done it. The very suggestion of such a change is repugnant to us and I hope that this thing will not be accepted by the House.

Then, coming to the Fundamental Rights, we find that while freedom of speech and freedom of association etc. have been given by one hand, they have been taken away by the other. The Clauses that follow have done away with all those rights which have been given in the first clause of Article 13. Similarly, if we look at the Directive Principles of State Policy, we find the same thing. You will remember that I placed before you an amendment seeking to add the word 'socialist' before the word 'republic'. I am sorry that at that time Shri Seth Damodar Swarup did not think it proper to support me. I am glad he has now come here as a champion of socialism. But at that stage, I am sorry nobody supported it and my suggestion was rejected. Anyhow, whether the word 'socialist' is used or not we must try to see that, when we incorporate political democracy, we also incorporate economic democracy in the Constitution.

So far as the Directive Principles of State Policy as given in the Draft Constitution are concerned, there are no grounds for thinking that they will at all effect the future structure of society in India.

There are certain other defects also which I shall point out when the amendments are moved and discussed.

But I would certainly like to mention some of the grave omissions in the Draft Constitution. There are three such omissions which are very grave and important, and they are: the omission of National Flag, the omission of National song and the omission of National language. I think these three omissions are very grave. The Drafting Committee ought to have seen its way to

incorporate all these three subjects in our Constitution. So far as the flag is concerned, there is no controversy. This could have been easily incorporated in the Constitution.

There is some controversy about the National song between 'Vandemataram' and 'Jana-Gana-Mana'. I think 'Vandemataram' which has been our song during the last 50 years or so and which has been the beacon-light in our struggle for independence will become the National song of our country. Then there is the question of the National language.

Mr. Vice-President : If you go on speaking I will have no time to give to other intending speakers.

Shri Vishwambhar Dayal Tripathi : I shall conclude my speech after a reference to the National language, Sir.

Our country is very big, and it has not therefore been possible so far to have one language for the whole of India. But, as an independent country, we have now to evolve some language which may become the national language of India. In this connection I make the following suggestions—Firstly, in every province the work of the Government and of the people should be carried on in the language or languages of the masses. Secondly, English, although it has been imposed upon us by the foreigners, should remain for sometime for our inter-provincial relations. Thirdly, we must have Hindi as our National language written in Devnagri character. (*Cheers*). So, it is here and now that we should definitely decide that Hindi written in Devnagri character is to be the national language of our country; while English may remain as an alternative language for some time till we are able to develop Hindi sufficiently both in northern and in southern India. As I said, in the provinces, the language of the masses should continue to be the language of the State. These are my observations about the National language.

The last point which I have to place before you is that we should, from cultural as well as from economic point of view, make provision for cow-protection. Our Congress party had already decided that this should be done. This was probably not known to the Drafting Committee. Therefore no provision with regard to this has been incorporated in the Draft Constitution. I hope the Constituent Assembly will see its way to incorporate this also in our Constitution.

With these few words, I hope the Assembly will consider the amendments on these subjects when they come up for discussion and try to remove the defects and fill in the omissions that I have pointed out before the House, Jai Hind.

Shri Brajeshwar Prasad (Bihar : General): Mr. Vice-President, Sir, I am opposed to federalism because I fear that with the setting up of semi-sovereign part-States, centrifugal tendencies will break up Indian unity. Provincial autonomy led to the vivisection of the country. Federalism will lead to the establishment of innumerable Pakistans in this sub-continent.

Our Ministers at the Centre have been at the helm of affairs since the last fifteen months. They know how difficult it is to secure the approval of provincial Ministers on any measure of reform which they like to introduce. Much time is wasted in securing their approval, which is rarely obtained.

The existence of provincial governments does not benefit the common man in any special sense. Its abolition will not jeopardise his welfare at all. On the other hand, I am convinced that his not lot will improve considerably. The professional politicians will of course be deprived of their means of livelihood. The average man in the provinces has to bear the burden of a costly administration. Salaries to Governor, Ministers, Parliamentary Secretaries and members of the legislatures swallow a large part of the revenue. The poor man is exploited in order to maintain the dignity of the State.

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Federalism is a conservative force in politics. It checks the rise and growth of radical economic movements. It perpetuates economic inequality between one province and another and this accentuates provincial rivalries and bitterness which lead to the demand for the formation of linguistic provinces.

Federalism is entirely unsuited to the needs of a collectivist age. Vast plans of national development await immediate enforcement. It will be a crime against the people of India to set up obstacles and hurdles in the form of part-States in the path of the Central authority which has to tackle the fourfold problems of illiteracy, poverty, communalism and provincialism. Those who talk of federalism, regionalism, provincial autonomy and linguistic provinces do not fully comprehend that they are talking the language of a bygone age. These concepts were appropriate to the needs of the 19th century when industrialism was in its incipient stage. These instruments of political organisation suit the requirements of agricultural communities interspersed over a wide area. Today the picture is entirely changed. We are thinking in terms of a world State which must be vested with all powers to regulate the problems of migration of people from overpopulated zones to areas which are underpopulated. The world State will have all powers to regulate the entire economic wealth of humanity. The existence of Nation-States has become an anomaly and a hindrance in the path of human progress and welfare. The dominant tendency of the age is towards greater concentration of power in the hands of some sovereign international authority. To talk of sub-national groups and federalism is to put back the hands of the clock. We do not know what will happen to India if a world war breaks out. If India gets an opportunity to build up the nation for a period of ten years at least, she will be in a position to meet the onslaughts of international powers. If India proceeds on collectivist lines unhampered by any provincial or federal part-States, she may be in a position to meet the challenge of the third world war. India lags centuries behind the Great Powers of the world. We must skip over certain stages of development and compress centuries into moments if we are to survive the forces of reaction both external and internal. By adopting parliamentary federalism we shall be playing into the hands of our enemies. A divided Germany, a vivisected Korea, pre-eminently fits into the political plans of international gangsters. A divided India provides some security to those who have plans of their own. The incorporation of federal principles in that part of India which has been left to us will provide hundred per cent security to those Jingoes and Junkers who survive on loot and plunder. No foreign power wants a strong Central Government in India. A strong Central Government in India will embarass all. It is suicidal to divide powers into federal, concurrent and provincial. Any such division of powers will weaken the hands of the nation on all fronts.

Shri S. Nagappa (Madras : General): Can any Honourable Member read his manuscript speech?

Mr. Vice-President : I do not see any objection. Please go on.

Shri Brajeshwar Prasad : The Collector in the district and the Commissioner of the Division must be brought directly under the authority of the Central Ministry of Home Affairs. The Governors, Ministers and the provincial legislators must be asked to quit the scene. There should be only one Government in India. All provincial and State Governments must be abolished. The Constituent Assembly should vest all executive, legislative, judicial and financial powers in the hands of its President. He should have four advisers, Rajaji, Panditji, Sardar Patel and Moulana Azad. After having set up this system of government, the Constituent Assembly should be adjourned *sine*

die. The Assembly should be summoned only to give its verdict in case there is sharp difference of opinion on any issue between the majority of the Advisers on the one side and the President on the other. If the President or an Adviser dies, the Constituent Assembly must be summoned to elect a successor. This system of Government should last till the end of the Third World War which may break out any moment. The present Government of India Act should be abrogated.

I have advocated the rule of philosopher-kings because Plato, whom I consider to be the Father of Political Science, considered it to be the best system of government. We look back with pride to the days of Raja Ram of Ayodhya and Raja Janak of Mithila. What Plato advocated in his Republic has always been practised in India. I have advocated the rule of philosopher-kings because this is the best system of government. I have more faith in living people than in the dead clauses of a written constitution. I do not believe in a permanent constitution. We are at the end of an epoch. It is very difficult for us to sense the needs of the coming century. The Americans framed their constitution at the beginning of the epoch of capitalism. We are asked to frame our constitution at the end of this epoch. The end of the third World War will decide the broad economic and political patterns of the coming age. Today we are in a state of ferment and decay. The whole of Asia is in the melting pot. The nation stands in need of spoon-feeding. We are passing through the birth pangs of a new social order. Any constitution which we may frame today may become completely out of date tomorrow. Power placed in the hands of the electorate may prove disastrous.

The traditions of the Khalifas of Islam—Abu Baqar and Shah Omar—are worthy of emulation. Germany, Italy and Turkey rose to grand heights under Hitler, Mussolini and Kemal Ataturk. The Soviet dictator has worked miracles. The days of Chandragupta Maurya, Asoka, the Guptas, Harshavardhana and Akbar were the best periods of our history when India enjoyed peace and progress.

There is no parliamentary form of government worth mentioning in the whole of Asia. There are some deeper reasons for this. Any attempt to foist parliamentarism on India will only spell our ruin and misery.

I regard the parliamentary system of government as the direct form of democracy. The system of government set up by Hitler, Mussolini, Kemal Ataturk and Stalin represent the indirect forms of democracy. The whole of Germany, Italy and Turkey were behind the dictators. What Pandit Nehru is to us, probably that or more is Stalin to the people of the Soviet Union. How can we call the Soviet rule undemocratic? The only conclusion to which we are driven is that the basis of all governments—both parliamentary and totalitarian—is democratic.

The essence of democracy is not franchise. The representation of the real will of the people, as distinct from actual will, is the core of democracy. One man, whether elected by the people or not, can represent the people as a whole if he stands for the real will of the community. The rule of the dictator is essentially democratic if he stands for the greatest good of the greatest number. The substance is always more important than the form.

One party rule is in perfect consonance with the ideals of democracy. This fact has to be grasped. We can have perfect democracy only in a classless society. It is only after war, and nation states and capitalism have been liquidated, that we can achieve perfect democracy. Friends may retort that one party rule will lead to Fascism. To this I would reply that parliamentary governments, as in Germany and Italy, facilitate the rise of Fascism if the people are not highly conscious of their political responsibilities. Are the

[Shri Brajeshwar Prasad]

people of India conscious of their political responsibilities? The vast majority of the people of India are sunk in the lowest depths of illiteracy, poverty, communalism and provincialism. Only philosopher-kings can tackle these problems. Both parliamentarism and federalism will aggravate the malady.

Critics may urge that power corrupts and absolute power corrupts absolutely. I do not believe in this maxim. Was Hitler corrupt? Is Stalin corrupt? The records of Mushtapha Kemal and Mussolini are as good as that of the leaders of parliamentary democracy.

In this atomic age, the problems of the modern state have become so complex and baffling that more and more people are beginning to realise that the affairs of government can only be tackled by experts. Parliamentary democracy has outlived its utility.

If we want to meet the challenge of Anglo-American imperialism in Asia, if we want to meet the demands of international trade and commerce, if we want to meet the threat of the third world war which is looming large on the horizon, if we are to meet the onslaughts of international politics, we must hand over full power into the hands of our leaders.

It is not possible for our foreign friends to meddle in the affairs of Spain or the Soviet Union because they have hung an iron curtain around their frontiers. Parliamentary democracy facilitates foreign intervention into the internal affairs of a people. If we want to be free from the machinations of our foreign friends, we should not provide any opportunity to them. Our constitution must be fool-proof and knave-proof. Parliamentary democracy must be discarded.

Dr. Ambedkar said the other day that our Constitution is both federal and unitary. It is federal during times of peace and it is possible of being converted into unitary type during times of war. The distinction between peace and war is fictitious, because we are now living in a state of cold war. If we want to meet the onslaught of foreign powers the type of democracy which we are trying to build will perhaps obstruct us. The demands of peace time are as urgent and insistent as that of war. If we have an unitary type of constitution now, we may be able to meet the demands of the third world war. I do not know whether there are more competent leaders than Pandit Jawaharlal Nehru and Sardar Patel. Then why are we wasting the time of the Government of India by all sorts of criticisms? We must build up our economy. If we are not able to meet the challenge of war, we may go down in history. I am not very sure what will be the outcome or the fate of this country if a war breaks out. The whole of Asia is in the melting pot; let us not try to weaken the hands of our leaders. They are the best people; they are the only people who can govern this country. Is it necessary that in order to keep them in control, we must be sitting in the legislature and talking all kinds of nonsense?

The Assembly then adjourned for lunch till Three of the Clock.

The Assembly re-assembled after Lunch at Three of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Shri H. V. Kamath (C.P. & Berar : General): Before we proceed, Sir, with the further consideration of the Motion, may I ask for a ruling from you as to whether the use of the word "nonsense" to describe the speeches of Honourable Members of this House conforms to parliamentary practice?

Mr. Vice-President (Mr. H. C. Mookherjee): I do not think it is in order.

Shri H. V. Kamath : This arises out of the speech made by Mr. Brajeshwar Prasad. He did use the word 'nonsense' to describe the speeches of Honourable Members in this House. That is why I am raising this point.

Mr. Vice-President : Is he present here?

Shri Brajeshwar Prasad : I did not know it was unparliamentary; if it is so, I withdraw it, Sir. I would replace it by any other word which the honourable Member may suggest.

Mr. Vice-President : We shall now resume further consideration of Dr. Ambedkar's motion.

Shri Moturi Satyanarayana (Madras : General): *[Sir, you will be surprised to know that a person from Madras has come here to speak in Hindustani. The general belief so far was that all the Members from Madras would like to speak in English. I am not surprised at this. It is my conviction that all the speeches in this Assembly should be delivered in Hindustani. It is, however, very unfortunate that even though people have worked for this cause for the last thirty years, Hindustani-speaking people have not secured election to this House from the south, the east and the west. It does not mean that there are no Hindustani-speaking people in these provinces. Only, Hindustani-speaking people have not been able to secure election to this Assembly. I see that even the Members from the north speak in English only. The reason may be that they want to have closer relations with the people of the South and other provinces. Whatever may be the reason, the fact is that they do speak in English.

The Constitution which is now on the anvil places before us provisions of many kinds. It appears to me from what I have been able to gather from these provisions that it is being built from above and not from below, the base. If it had been built from the base upwards, our Constitution would have first been framed in the languages of our country. The people know what that swaraj means for which we have been labouring for the last thirty years and for which we have been fighting for the last thirty years, and they are also conscious that the Constitution is being framed for them and not for anyone else. But only the international view-point, and not the national nor the swaraj, nor even the villagers' view-point, is being given weight in the framing of this Constitution. We want that the Constitution for the whole country should first be framed in the language of the country, that the Constitution should be for the people of the villages so as to ensure food and cloth for them, as it was the lack of these necessities that led us to make our demand for swaraj. It would be very good for us if the Constitution is framed in the languages of the country. It may afterwards be translated into English or into the languages of the countries whose constitutions we have drawn upon, of those whose opinion we value. It would have been much better if we had seen to this matter in the very beginning. If this consideration had

* [ ] Translation of Hindustani Speech.

[Shri Moturi Satyanarayana]

been kept in mind from the very beginning, we would not have had occasion to listen to all the criticisms that have been made today in this House — that this Constitution is not suited to the genius of our country, that it is not suited to the people of the villages, that it is not in the interests of the people of the cities and that it is not in the interests of the poor. We did not keep that in mind in the beginning and that is why there is all this criticism. I hold that if we have to provide food, cloth and shelter for our poor brethren, the villages and the village panchayats, should form the base of our Constitution. We should proceed with our work keeping them in mind. It is because we have not done this that we have to consider whether our provinces should be strong or weak, whether our Centre should be strong or weak. These questions arise only because we have not given due importance to our provinces and villages in framing our Constitution. The basic idea under lying the whole constitution is as to how our country will compete with Britain, Russia or America and what relations it will have with them. There is nothing in the whole Constitution to show that our intention was to do something for the inhabitants of our country, for our villagers and for our towns folk, and for the poor people.

So far as production is concerned, there is nothing in it that would make the village people work their utmost in order to produce the maximum quantity of wealth. I think that it will be said in reply to this that later on when this Constitution would be enforced all these would be taken to be implied by its provisions and would therefore be put into practice but that these cannot be specifically included within the Articles of the Constitution. But I hold that just as the face is to a man's character so also a mere glance at the Constitution should be sufficient to reveal the direction in which it tends to move the people. Therefore, I hope that at the time when the Constitution would be considered here clause by clause every attempt will be made to include in it provisions for all that we have been promising to provide to our countrymen.

For the last four or five days a very important problem—the problem of the relations that should subsist between the State or national language and the various provincial languages—has been engaging our attention.

There has been ample discussion as to what should be the position of the national language and the position to be given to the various provincial languages. I hold that unless we decide as to what would be the place of provincial languages, how they would be used in their respective provinces, no decision can be taken about the national language. In my opinion, our provincial languages must not have a less important place than that of our national language. If a decision is not taken in regard to this matter there will be a very powerful agitation in the country and many people will say that the people of northern India who hold Hindi as national language are trying to make their own language the national language. This will have a serious consequence in the provinces and they will oppose it and as a result the country will be split up into many divisions, as of old. To prevent this, it is very essential to make it clear that in no case the state language would take away the importance of provincial languages. If this is not done, there is a possibility of a very serious danger arising for the country. It must be averted. The purpose for which a State language is needed is to establish unity within the State. Another function it fulfils is to facilitate the carrying on of international relations. In my opinion it is very essential for us to build up a composite culture, a composite language and a composite society. The assimilation of the culture and the language and the dress of all those who come to our country has been a part of our tradition for centuries. We did this and marched on the path of progress. We should adopt that practice for the future

also. If we fail to do so, it is very possible we may not make such rapid progress in international matters as our Prime Minister has in view. On the contrary, it is quite likely that we may remain involved in our own internal disputes. It is better if we avoid it. Merely to hold this view is not sufficient. We must also act upon it. Therefore, I hope, Sir, that the language which is going to be made our national language, which is going to be used here, must be the link of a composite culture, must have a mixed vocabulary, a mixture of phrases and idioms and a composite script so that we may have mutual understanding within the coming ten or fifteen years, and thereafter be able to march forward together. Till that time we should not take any step to give up our composite culture. In short I would like to submit that our national language should be Hindustani and our culture should be Hindustani.

In regard to the national script I submit that until all our people have learnt to write in a common script—and today they use two separate scripts—both the scripts should be given recognition so that no one may have any occasion to complain that his script which he had been using for centuries was being suppressed after the attainment of freedom and that thereby his culture and religion was being suppressed. If we are prepared to continue to use the English language for the next fifteen or twenty years, I do not find any reason why the other current languages cannot be kept on for that period. Today some people complain that alien words are being imported into their language. But we should not only keep these words but—should also extend their meaning. I, therefore, think that both from the viewpoint of justice as from that of expediency it is essential to be fully considerate in such matters.

I would like to discuss this subject much more fully and perhaps it is not difficult to speak at length on it. But there have been so many longwinded speakers since this morning—several of whom you pulled up rather sharply—that I do not wish to take any further time of the House and I now conclude my remarks. I would, if I get an opportunity, express my views at the proper time on the amendments that have been tabled.]

Shri Suresh Chandra Majumdar (West Bengal : General): Mr. Vice-President, Sir, it is with deep humility in my heart that I rise to speak a few words on the onerous task which history has assigned to this Assembly namely, the making of a democratic Constitution for this great and ancient land whose civilization dates back to an age beyond man's memory. No nation has had such varied experience of success and failure, of happiness and sorrow, of fulfilment and frustration as ours. Among the many lessons with which our history is replete, there is one which in my opinion should command our utmost attention as we are engaged in settling the forms of our State and Government. It is this that throughout history our finest glories in whatever field they might be, were achieved precisely during those periods when India, striving towards political cohesion was most successful and such cohesion always presupposed a strong unifying Central authority. The form of that authority was different at different times and of course we shall have to evolve one that will suit the conditions of the present age but the truth remains that India's greatness depends as it has always done on the effective strength of a unifying Centre. I therefore want the Constitution to provide for a strong Centre and am glad that the Drafting Committee had kept this point prominently in their view. The time has now come to curb the bias in favour of the so-called 'provincial Autonomy' which arose from historical causes. When Alexander attacked India we understand that India was divided into 52 autonomous units and we know what consequences it produced. It might have had some justification when the Centre was irresponsible and completely under alien domination. Even so, 'provincial autonomy' encouraged provincialism and that the curse did not assume greater proportions was due wholly

[Shri Suresh Chandra Majumdar]

to the unifying influence and control which the All-India Congress exercised over the provincial ministries. Now there is no foreign power in the land and there should be no conflict between the provinces and the Centre; and as between the provinces themselves, possibilities of conflict can be best lessened by the Centre being given power to intervene effectively whenever and wherever provincial jealousies may threaten the unity, or impede the progress of the country as a whole. I therefore want that it is not only at times of war or other grave emergency that the State should function as a unitary State but that in normal peace time also the Centre should have certain necessary overriding powers without which planned reconstruction of the country will not be possible.

While on the subject of delimitation of powers. I should like to make a very brief reference to Dr. Ambedkar's comments on the role of the village community in India's history. It is true that at times the village community stood still when history passed by. But this happened invariably in periods of national depression when everything was in a state of stagnation and the political life itself was disintegrating and the village community was indifferent to the main course of history. But there were other times — times of healthy national life — when the village community did supply strength. I believe the village community, if it is properly revitalised and made power-conscious, can become not only a strong prop of the State but even the main source of its strength.

India has been always proud—and I also share that pride—of her achievement of cultural unity in diversity, but in matters political it is essential today that we emphasize unity and uniformity rather than diversity. I therefore want a uniform political structure for the whole country. No praise can be too high for the wonderful work of integration which the States Ministry has done and is still doing under the creative, I should rather say, inspired leadership of our Deputy Prime Minister and I hope this work will proceed further to the point where the viable States and the States' Unions will have the same political and administrative organisations as the other units—I mean the present Provinces—within the over-all political structure of the country. In view of the basic character of these units as recognised by the Chairman of the Drafting Committee himself, I do not even like them to be called "States", because that may create an impression that India is a Federation of the type of the United States of America. All units, the present Provinces as well as the integrated States, should be given the uniform nomenclature of "Province".

I am proud of the achievements not only of my own language but, as an Indian, also of those of the other major languages of India. I certainly want a *lingua Indica* for the whole country, but at the same time it will be an irreparable loss if we allow the major provincial languages to languish by neglect. The *lingua Indica* that we may adopt should not be a kind of imposition. It will be willingly accepted by all if it is allowed to make its way gradually and naturally and without giving a rise to a feeling of imposition. The previous Speaker, Shri Satyanarayana, is an outstanding example of this. Nobody imposed upon him Hindi or Hindustani, but Honourable Members have heard the fluency with which he spoke just now. As regards English we need not ignore its usefulness as a medium of international exchange, and even in the sphere of internal use I am not in favour of violently throttling it but would like to see its gradual replacement. It may not be wise to set a time limit in a matter like this.

It is unfortunate that the question of linguistic provinces has become mixed up with provincialism. The principle of linguistic provinces can be justified only on two grounds, namely, administrative and educational

convenience and the development of our great major languages. It would be wrong to introduce any other consideration into this matter, which unfortunately has become a subject of violent controversy and even conflict. Possibly we are all suffering from the hang-over of our depressed condition which is only just over and under which our foreign rulers always emphasized and encouraged the spirit of division. I hope we shall be able to see things in their proper perspective after some time. It is essential that at this stage all internal conflicts should be avoided. If, therefore, the question of linguistic regrouping of provinces cannot be settled without bitterness and conflict now, I think the question should be postponed for ten years. I would only urge that the Constitution should not contain any such provision as will make a settlement of this question too difficult in the future. At the same time I would appeal to all my countrymen meanwhile to behave in a manner so as not to prejudice the rightful claims of any language Hindi or Hindustani as the *lingua Indica* of India. It is due to my great love for all the major Indian languages as well as to the necessity I feel that all our countrymen should understand and follow the Constitution, that I have asked that the Constitution be made available in all the major Indian languages and approved by this Assembly before its final adoption.

One word more. I hope I will not be misunderstood in saying this in this Gandhian era. I want to say a few words regarding the right of the people to bear arms. We are passing the Constitution today. But so far as I can see there is no mention of that. I would like that the House may provide in the Constitution that as a fundamental right, all adults, irrespective of whether they are men or women, would be allowed to bear arms for the defence of Mother India whenever she would be in peril. Jai Hind.

Pandit Mukut Bihari Lal Bhargava (Ajmer-Merwara): Mr. Vice-President, Sir, the Draft Constitution has been under fire for the last several days in the House. I would not deal generally with the Draft Constitution but would confine my observations to one particular aspect of the Draft Constitution, and that is what is incorporated in Part VII of the Draft Constitution. It deals with what are known as the Chief Commissioners' provinces under the present Government of India Act of 1935. At the very outset I would respectfully draw the attention of the House that in this particular case the Drafting Committee and its Chairman have been very very unjust to the Chief Commissioners' provinces. Infact, in making the recommendations which the Drafting Committee has made in Part VII of the Draft Constitution, it has exceeded its powers. It is absolutely clear; if necessary, reference may be made to the resolution adopted by the House on 29th August 1947, which brought the Drafting Committee into existence. The powers of that Committee are specified in the Resolution that we adopted by the House on the occasion. It is simply to implement the decisions that have already been taken by the House. When the question of the Chief Commissioners' provinces came up before the House, from the Union Constitution Committee Report you will be pleased to find that in part VIII Clause 1 what was recommended by the Union Constitution Committee was that the Chief Commissioners' provinces should continue to be administered by the Centre as under the Government of India Act, 1935. When this clause 1 of part VIII of the Union Constitution Committee report was moved by the Honourable Sir N. Gopalaswamy Ayyangar in the House, an amendment to it was moved by my friend Mr. Deshbandhu Gupta and that amendment was unanimously accepted by the House. That amendment sought the setting up of an *ad-hoc* committee consisting of seven Members of this Honourable House, which committee was to go into the question of the Chief Commissioners' provinces and to make suggestions for effecting changes in the administrative systems of these provinces on democratic lines so as to fit in with the changed conditions

[Pandit Mukut Bihari Lal Bhargava]

in the country. The fact that this amendment was unanimously accepted by the House clearly implies that the House stands committed to bringing about suitable administrative changes in the setup of these provinces on democratic lines so as to fit in with the Republican Constitution of free India. In spite of this mandate from the House, one is staggered to find the recommendation of the Drafting Committee in Articles 212 to 214 of the present Draft Constitution. My respectful submission would be that these recommendations are absolutely *ultra vires* in as much as the Drafting Committee could not set at nought the recommendations of the *ad-hoc* Committee. The *ad-hoc* Committee consisted of three very distinguished Members of this House,—Sir N. Gopalaswamy Ayyangar, Mr. Santhanam and Dr. Pattabhi Sitaramayya. In spite of this the unanimous recommendations of the *ad-hoc* Committee have been set at nought by Articles 212 to 214. What Article 212 does is to provide that the Chief Commissioners' provinces shall continue to be administered by the President to the extent he thinks fit, through a Chief Commissioner. What the Drafting Committee has done in this Article 212 is simply to repeat the words of the Government of India Act, 1935 Section 93 (3). These were the very words, which by the acceptance of the amendment of Mr. Gupta, were set at nought by the House. Consequently, my submission is that the present Articles 212 and 213 are absolutely *ultra vires* and the House should not give any consideration to them. The *ad-hoc* Committee after going into the question of the Chief Commissioners' provinces has incorporated certain recommendations to make certain administrative changes in the present constitution of the Chief Commissioners' provinces. In fact, in the modern age when India has attained the goal of full independence and when we have assembled here to draft a constitution befitting a free Republican India, it is impossible to think of a recommendation of the character incorporated in Articles 212 to 214. These recommendations seek to perpetuate a regime of autocracy. The Chief Commissioners' provinces have been enclaves of bureaucratic and autocratic regimes and even today, fifteen months after having attained full independence, we find there is undiluted autocracy prevailing there. For political and strategic reasons the British Government ignored the claims of the Chief Commissioners' provinces to responsible government. The only concession they made was in 1924 when a single seat was allotted in the legislature. Beyond this, the administrative set up in these provinces continue to be that of one man's rule. The Advisory Councils to the Chief Commissioner which were set up immediately after the formation of the National Interim Government at the Centre have served no useful purpose. In spite of them, one man's rule is prevailing. So far as Ajmer-Merwara is concerned, the administration there is a hot-bed of corruption, nepotism, favouritism and inefficiency. How can this deplorable state of affairs be brought to an end until and unless the accredated representatives of the people are given a voice and a hand in the administrative set-up? The demand for the establishment of responsible government in these Chief Commissioners' provinces has been repeated from every one of them. No less than three Conferences convened during the last two years in Ajmer-Merwara have repeated this demand for immediate establishment of responsible government. The Provincial Congress Committees have also done so in every place. Notwithstanding this, the autocracy has prevailed and these three Articles—212 to 214 of the Draft Constitution—air at perpetuating this system of autocracy. I appeal to this august House, how on earth can this state of affairs be tolerated by an Assembly which has assembled to draft a constitution for free India? Yesterday there was reference made to One-Rajputana Union. We all want territorial integration and administrative cohesion of the different Rajputana States into one single unit and every one desires that this should be an accomplished fact as soon as possible, but till that takes place, why should the

present administrative set-up be allowed to remain? We do not know what is going to be the future picture of Rajputana Union. If and when it comes, Ajmer-Merwara would always welcome any such move and Ajmer will be glad to join in any such Rajputana Union provided its historical, geographical and cultural place, which has always been its own since the dawn of history, throughout the Pathan, Moghul, Maharatta and the British periods, is retained in the future set-up of such Union. But because the existence of such a Union is a possibility or even a probability it does not mean that the autocratic system should be allowed to continue. To the other Chief Commissioner's province, *i.e.,* Delhi, a reference was made about it yesterday. Regarding Coorg, its position is also identical and analogous. The Legislative Council there has only advisory functions and it has neither legislative power nor any voice in the day to day administration. There also the demand of the people has been the establishment of responsible government. I fail to understand what can possibly be the difficulty for this House to accept *in toto* the recommendations of the *ad hoc* committee. The *ad hoc* committee has been careful in its recommendations. It has recommended that, looking to the financial difficulties of those tracts, it will be necessary that the Centre here should have greater powers than it has in Governors' provinces. We, the representatives of the Chief Commissioners' provinces, in spite of our unwillingness, agreed to accept those restrictions only as a compromise measure. Fiscal autonomy is conceded only in name, because all the financial proposals will have to be previously approved by the President of the Union. Similarly, in the legislative sphere also what has been recommended is that every Bill before it becomes law must be assented to by the President of the Union. It has also been provided in the *ad hoc* committee's report that in case of any difference of opinion between the Lieutenant Governor and the Ministers, the President will have the final voice. Consequently there cannot be room for any apprehension in accepting the recommendations and granting some form of responsible government to Ajmer-Merwara and the other Chief Commissioners' provinces.

One argument that has been repeated often is that it is not a viable unit, that it is not self-sufficient and that it is a deficit province. I would respectfully ask who is to be blamed for this? Ajmer-Merwara people never wanted than they should be segregated and left as an island in the midst of the Rajputana States. It was the responsibility and the decision of the then Government at the Centre that Ajmer-Merwara should remain as a separate entity in order that it may be the citadel of the Centre to keep its clutch firmly on the neighbouring States. Therefore why should the people be subjected to any penalty now? As I said, it was for strategic and political reasons that it was left as an island. That being so, may I ask why the Central Government was giving subventions to N.W.F.P. of about a crore of rupees and subvention also to Sind? Now if it decides to give today subventions to Assam, Orissa and also West Bengal and East Punjab, it is for strategic reasons and for protecting the frontiers. If that is the case, why should not Ajmer-Merwara also be given subvention? For the reasons placed before the House by me, Articles 212 to 214 are absolutely *ultra vires* of the powers of the Drafting Committee and the recommendations of the *ad hoc* committee appointed by this Honourable House, which already stands committed to a policy of accepting suitable administrative changes in the set-up of this province, should be accepted.

With these remarks I support the motion for the consideration of the Draft Constitution by the House.

Mr. Vice-President : There is an established convention that in the case of a Member who is not present when his name is called by the Chair to participate in the debate, he loses his right to speak. That happened to one of our colleagues at the beginning of today's sitting of this Assembly. He has

[Mr. Vice-President]

explained to me that his absence was due to unavoidable reasons. If I have the permission of the House, I will give him a second chance to speak. As no one objects I give him permission to speak and call upon him to address the House.

Shri S. V. Krishnamurthy Rao (Mysore): Mr. Vice-President, I thank you for giving me an opportunity to speak on the Draft Constitution. I join the various speakers who have paid a chorus of tribute to the Drafting Committee and its Chairman, Dr. Ambedkar.

An attempt has been made in this Draft Constitution to put in the best experience of the various democratic constitutions in the world, both unitary and federal. Of course no Constitution can be perfect and even our Constitution will have to undergo some modifications before it finally emerges from this House.

I shall first refer to the Directive Principles of policy. I submit that this contains the germs of a socialistic government. I submit that this Chapter should come in immediately after the Preamble. As objective principles of the Union, we will be giving it greater sanctity than to others and it will stand as the Objective principles of the future Government. With certain modifications they can be adopted as a socialist programme for the future Parliament of India.

The next thing I wish to refer is the Fundamental Principles. I find certain conspicuous omissions here. In most of the democratic constitutions, the freedom of the press is guaranteed, but in our Constitution I find it is not there. Of course there is freedom of expression. But I feel in a country with 87 per cent illiteracy, our press has to play a very important role both in the political and democratic spheres in the education of the masses. I feel that a specific provision should be made in the Fundamental Principles guaranteeing freedom of the press. In fact in the Constitution of the United States of America it is enacted that the State shall not pass a law restricting the freedom of the press. Similarly, the inviolability and the sanctity of the home should be guaranteed. Similarly again, I feel that no citizen of India should be expelled from the State. Such a provision should find a place in the Chapter on Fundamental Rights.

One thing I would like to see omitted is the provision for freedom to propagate religion. This right which has been claimed by some has been the bane of our political life in this country. Probably it might have been thought proper to include it in the old set-up of things. In a secular State, such a provision, especially with the guarantee for the free exercise of religion and freedom of thought, is out of place in our Constitution and I submit to this House that that provision should be omitted.

Then there is the question of the redistribution of provinces. I am not one of those who see something read in this question. If the linguistic provinces have been bastions of strength in our fight for freedom, I do not understand how they can be damned as showing fissiparous tendency when we ask for linguistic provinces. In fact, every citizen should feel that he has got freedom. I feel that the language of the Parliament of the particular region should be the language of that area. In fact there is no place for multilingual provinces like Bombay and Madras.

The provinces should be distributed on a linguistic basis. We are not going to break our heads over this question. It can be settled amicably by mutual understanding and co-operation.

Similarly about language. The southern languages of India have borrowed freely from Sanskrit. We have got both Tatsama and Tadbhava words in our Dravidian languages. I feel that Hindi with the Devanagri script would be acceptable to us, but I think that it should not be forced on us all at once, especially the vast numbers of people inhabiting the Deccan peninsula. It should be gradually introduced. We are prepared to accept Hindi with the Devanagri script as the official language of India, but time should be given to us to pick

up Hindi. This Constitution should reflect the cumulative wisdom of every section of this House. If you want to take us with you, we must understand your arguments, we must understand your points of view and we must hammer out this Constitution and make it acceptable to all. So also, the sections of the people who have got the Urdu script should also be given time to pick up the Devanagri script as Begum Aizaz Rasul suggested.

One other point I would like to touch upon is regarding the provisions in Part VII for the states in Part II of the First Schedule, that is, Sections 212 to 214. I think they should not be made a permanent feature of the Constitution. In fact, the policy of the Government of India has been to make the States into viable units. Sections 212 to 214 with the various amendments suggested by the Drafting Committee will simply increase the number of these uneconomic small States in the country. Provision is made for Lieut. Governors, Council of Ministers and so on. If these are allowed to remain a permanent feature of the Constitution, I am afraid they will divide the country into smaller units and the Centre will be burdened with maintaining these uneconomic units. Within a short time these smaller units must be induced to merge with the larger provinces or States amidst which they are situated. Take for example the province of Coorg. It has an area of only 1,500 sq. miles and the population is about 160,000. I learn that ever since the Coorg budget was separated from the Central Budget, they have not been able to undertake any development project. They have not been able to repair a bridge which would cost only about Rs. 5,000.

Then about the capital of India, I agree with my Honourable friend from Mysore who stated that before vast sums of money are expended over the capital for the East Punjab and also the extension of Delhi, we should consider locating the capital in a more centrally situated place.

There may be some justification for Delhi to continue as a Centrally administered area because it is the capital, but there is absolutely no justification to increase these Centrally administered areas. In fact the Central Government will be functioning in two capacities, one as the Central Government and the other as a provincial government for the Centrally administered areas. I do not see any justification for the Centre spending large sums of money on these uneconomic units.

Both Mr. Ananthasayanam Ayyangar and Professor Ranga asked why there should be Constituent Assemblies for the States. I submit that this is none of our fault. As soon as we came here in July last, some of us Members representing the States tabled a resolution before this august Assembly that a committee be constituted to evolve a model constitution for the States. If the archives of the Steering Committee are searched, such a resolution will be found there, but unfortunately this Assembly did not take any steps and things so developed that we had to demand Constituent Assemblies in our States when we fought for responsible government in our States. I do not see any harm in this because no constitution drawn up by these Constituent Assemblies can be at variance with the Constitution that is going to be adopted by this House. They must fit in with the all India picture. So long as they do this, I do not see why they should not be allowed to finish their job.

Another suggestion was made that there should be uniform powers both for the States and the provinces. In this connection, I would like to submit, Sir, speaking on behalf of States like Travancore and Mysore, that we are far ahead of some provinces industrially, economically and financially. In bringing about uniformity between provinces and the States, I would submit to this House that there should be no levelling down. There should be only levelling up. Mysore has co-operated in all all-India matters and is still co-operating, and I am sure it will co-operate also in bringing about uniformity, provided there is only

[Shri S. V. Krishnamurthy Rao]

levelling up and no levelling down. In fact, I am one of those who believe that there should be uniform powers both for the States and the provinces. I want the Supreme Court to be given appellate powers not only in constitutional matters but also in civil and criminal matters. I am glad that the Drafting Committee has made provision for this and I am sure that this provision will be taken advantage of by the States.

Another point I would like to touch upon is Section 258 as regards the financial powers of the President. Power is given to the President to terminate any agreement entered into between a State in Part III and the Union after a period of five years. I submit, Sir, that five years is too short a time. The clause itself says that such an agreement would be valid for a period of ten years. If such an agreement is terminated, after five years it may disturb the financial position of the State concerned. In fact, for long range planning, five years is too small a period. I submit that it may be altered with the consent of the State. If after the report of the Finance Commission the President feels that it is necessary to terminate such an agreement, he may do so in consultation with the State concerned. My point is it should not be one-sided, as this would work as a great financial handicap to the State concerned.

Then, Sir, as regards the power to amend the Constitution. I do not agree with my Honourable friend, Mr. Santhanam, that it should be rigid. It should be as flexible as possible because the integration of smaller units into bigger units is still going on and bringing about uniformity between the States and the provinces also is still going on. Perhaps it will take some time before there is some sort of uniformity between the various units of the Federation, and during the initial period it should be as easy as possible for the future Parliament to amend the Constitution to suit the circumstances of the time. The power to amend the Constitution should be made flexible, but even here a difference is made between the States and the provinces. I submit that this difference between the States and the provinces as regards the number of votes should be done away with. Equal rights should be given both to the States and the provinces so far as amendments to the Constitution are concerned.

With these words, I support the motion for the consideration of the Draft Constitution.

Shri N. Madhava Rau (Orissa States).—Mr. Vice-President, I had not intended to join in this discussion, but in the course of the debate, several remarks were made not only on the provisions of the Draft Constitution, but on the manner in which the Drafting Committee had done their work. There was criticism made on alleged faults of commission and omission of the Committee. Mr. Alladi Krishnaswami Iyer who spoke yesterday and Mr. Saadulla who will speak on behalf of the Committee a little later have cleared or will clear the misapprehensions on which this criticism is based. I felt that as a member of the Committee who participated in many of its meetings, after I had joined the Committee I should also contribute my share in removing these misapprehensions if they exist among any large section of the House.

It is true that the Draft Constitution does not provide for all matters, or in just the way, that we would individually have liked. Honourable Members have pointed out, for instance, that cow-slaughter is not prohibited according to the Constitution, Fundamental Rights are too profusely qualified, no reference is made to the Father of the Nation, the National Flag or the National Anthem. And two of our Honourable friends have rightly observed that there is no mention even of God in the Draft Constitution. We have all our favourite ideas; but however sound or precious they may be intrinsically in other contexts, they cannot be imported into the Constitution unless they are germane to its purpose and are accepted by the Constituent Assembly.

Several speakers have criticised the Draft on the ground that it bears no impress of Gandhian philosophy and that while borrowing some of its provisions from alien sources, including the Government of India Act, 1935, it has not woven into its fabric any of the elements of ancient Indian polity.

Would our friends with Gandhian ideas tell us whether they are prepared to follow those ideas to their logical conclusions by dispensing, for instance, with armed forces; by doing away with legislative bodies, whose work, we have been told on good authority, Gandhiji considered a waste of time; by scrapping our judicial system and substituting for it some simple and informal methods of administering justice; by insisting that no Government servant or public worker should receive a salary exceeding Rs. 500 per month or whatever was the limit finally fixed? I know some of the Congress leaders who sincerely believe that all this should and could be done. But we are speaking now of the Constitution as it was settled by the Constituent Assembly on the last occasion. Apart from the Objectives Resolution (which is otherwise known as India's Charter of Freedom) and the enunciation of Fundamental Rights, the decisions of the Assembly dealt, sometimes in detail and sometimes in outline, with questions relating to the composition and powers of the Legislature, the executive authority and the judiciary of the Union and of the provinces, the distribution of legislative powers and administrative relations between the Union and the units, finance and borrowing powers, the amendment of the Constitution and soon. Is there any instance in which a decision of the Assembly embodying Gandhian principles has not been faithfully reproduced in the Draft Constitution? If it is the contention of these critics that the decisions of the Assembly itself have fallen short or departed from those principles, that is of course another matter.

Then those of our friends who wanted indigenous ideas of polity to be embodied in the Constitution would have to admit that while (as has been pointed out by an honourable Member today) there might have been republics in the northern India in the days of Alexander, by and large, kingship was an integral part of Indian polity. At a time when the institution of kingship is so unpopular, when even Indian rulers are barely tolerated although they have shed all power, when formal elections and ballot boxes unknown to our ancestors are regarded as the *sine qua non* and authentic symbols of democracy, it would be unreal to pretend to seek guidance for our immediate task in the ancient political philosophy of India. A more pertinent point is this. Why did not the exponents of these fine ideas press them on the attention of the House at the proper time and secure their acceptance when the Constitution was more or less settled during the last session? Why do they not do so even now if they have any feasible suggestions to make? Why should they blame the Drafting Committee for not incorporating in the Draft what can only be described as belated second thoughts?

There is undoubtedly a feeling among some Congress circles and others that the National Government in the Centre and the people's Government in the provinces are both departing from the principles of Gandhiji, that they are carrying on the much the same bureaucratic way as their alien predecessors and that the promised Ramrajya is nowhere near being realised. In these circumstances, "back to Gandhi" has become a sort of militant slogan and a challenge to the authorities. It might or might not be right, but it has to be addressed to the proper quarter. To apply that slogan in the context of the very restricted task entrusted to the Drafting Committee seems to be entirely pointless. I am reminded of a couplet written about an archaeologist of the name of Thomas Hearn. This is how it runs:

"Quoth Time to Thomas Hearn

What I forget you learnt."

"You learn what I forget" seems to be rather naive advice.

Shri B. Das (Orissa : General): On a point of order, Sir, Members of this House asked the Drafting Committee to draft the Constitution and each of us is giving out our views now. It is no use for a member of the Drafting Committee to tell the House that we use slogans. I strongly protest against such language by a member of the Drafting Committee.

Mr. Vice-President : Mr. Das, you do not propose to curtail the liberty of expression allowable to a member of the Drafting Committee? You and I may not agree with him. Surely he is entitled to give out his views. Is it not?

Shri N. Madhava Rau : It is very unfortunate that a good deal of controversy arose in regard to village panchayats. Dr. Ambedkar's strong remarks on the subject were apparently based on his own experience. But, like Mr. Alladi Krishnaswami Ayyar, I wish to speak for myself in the light of my own experience. For over thirty years, the Mysore Government have put the revival of village communities and the improvement of the working of village panchayats in the forefront of their activities. A great deal of public expenditure has been incurred on this account. All officers concerned from the Dewan to the Tahsildar have, according to their lights, given personal attention to the condition of the villages. The present popular Government in Mysore, are, I understand, making still more intensified efforts in the same direction. The results are, in my opinion encouraging and in some cases, quite gratifying. It is true some villages are chronically faction ridden and indulge in petty tyrannies, or remain the strongholds of untouchability. A considerable number are apathetic or even moribund. But about thirty per cent could be classed as good; that is to say, they had held regular meetings, collected panchayat taxes, undertaken some optional duties and carried out works of public utility and weekly cleaning by voluntary labour contributed by the villagers and had taken steps to ensure the vaccination of children and so on. The success that has been achieved such as it is, is largely conditioned by the initiative of a good headman or other influential land-lord. I am sure that experience in other parts of the country is more or less the same. In certain small Indian States, where the bureaucratic system of administration had not penetrated, I found remarkable self-help and organised effort in the villages. With sustained effort on the part of the provincial and State Governments, the resuscitation of village communities may well be hoped for. As the Members of the Assembly are aware, Gandhiji was very particular about constructive work in the villages. This is what he said on one occasion. "If the majority of congressmen were derived from our villages, they should be able to make our villages models of cleanliness in every sense. But they have never considered it their duty to identify themselves with the villagers in their daily lives." There is nothing in the Draft Constitution to prevent provincial Governments from developing the village panchayats system as vigorously and as rapidly as they are capable of doing. The only point which has now come into prominence is whether the electoral scheme for the legislatures should be founded on these panchayats. If the House comes to the decision that this should be done, two Articles in the Draft Constitution have to be slightly amended. But, before taking such a step, the Assembly will have very carefully to consider whether by throwing the village panchayats into the whirlpool of party politics, you will not be destroying once for all their usefulness as agencies of village administration.

In curious contrast with those Members who found fault with the Drafting Committee for not presenting to them a Constitution according to their own ideas, although they had not been approved by the Assembly, there were others who criticised the Committee for having exceeded its instructions. This is an aspect of the matter which will be dealt with by the next speaker. I have only to say, in view of the criticism of Mr. B. Das, that by accepting membership of the Drafting Committee, Members have not given up their freedom to express their views either from the committee room or the floor of this House.

The Draft Constitution is nothing more than a detailed agenda for this session, it is to serve as the basic working paper so to speak. There are other papers too, such as the Report of the Expert Committee on Finance and the Report of the Committee on Centrally Administered Areas. This is not the only paper before the House. If the Draft Constitution is viewed in this light, I am sure Members will appreciate that the charge that the Committee has, in any way exceeded its instructions is unfounded.

One of the honourable Members observed that this constitution if adopted would become a fruitful source of litigation. So long as the Constitution is of a federal type, the possibilities of litigation cannot be excluded. It is all the more necessary, therefore, that all Articles and Clauses are closely scrutinised to ensure that litigation and consequent uncertainties of administration are minimised if they cannot be avoided.

Sir, there are one or two points which I should like to refer to in this connection. One is this: when any federal constitution is in the process of making, there are always two opposing sets of views, namely, the views of those who want to make the Centre strong, and the views of those who would plead for the utmost extent of State autonomy. The provisions of the Draft Constitution are necessarily a compromise, tentatively suggested, of these opposing views. My own feeling is that the scales have been titlted a little towards the Centre. If this feeling is shared by any large section of the House, it should be possible to adjust the balance in the direction desired. The second point, Sir, is that the provisions relating to the accession of States are meagre. There have been so many different kinds of mergers of late and the final pattern, so far as we know, has not yet emerged. The exact procedure by which the States will accede to the Union has to be determined at an early date so that the names of the acceding States may be mentioned in the appropriate Schedule and other relevant parts of the Constitution finalised.

There is a good deal of wisdom in the saying: "For forms of Government let others contest; whatever is best governed is best." However, things being what they are, unfortunately, we have to have some sort of written constitution and it has inevitably, to be a lawyer's constitution. If it is possible for any honourable Members to animate the Draft Constitution by a Promethean breath of ancient political wisdom or exalted patriotic sentiment many of us in this House would surely welcome such an effort.

Shri Biswanath Das (Orissa : General) : Sir, May I have a word of elucidation from my honourable friend, as to why the Honourable Members of the Committee modified even decisions arrived at by the Constituent Assembly as also by Committees?

Shri N. Madhava Rau : I think if a specific instance is given, the next speaker will explain.

Shri T. Prakasam (Madras : General): The Honourable Mr. Madhava Rau said that the ballot box and ballot paper were not known to our ancestors. I would like to point out to him, Sir, that the ballot box and the ballet papers were described in an inscription on the walls of a temple in the villages of Uttaramerur, twenty miles from Conjeevaram. Every detail is given there. The ballot box was a pot with the mouth tied and placed on the ground with a hole made at the bottom and the ballot paper was the kadjan leaf and adult franchise was exercised. The election took place not only for that village but for the whole of India. This was just a thousand years ago. It is not known to my honourable Friend and that is why he made such a wrong statement—a grievously wrong statement and I want to correct it.

Syed Muhammad Saadulla (Assam : Muslim) : Mr. Vice-President, Sir, I rise with some difference to sum up this debate and general discussions of the Draft Constitution for I was a member of the Drafting Committee. I do not mean to cover all the grounds that have been advanced during the last four days on the floor of the House but I will speak generally on the trend of the criticism and try to show by facts why the Drafting Committee took a certain line of action. Many honourable Members have been kind enough to give us a meed of appreciation for the tremendous trouble we took in the task of preparing the Draft Constitution. Certain honourable Members were not in a position to congratulate the Drafting Committee and I welcome that also. For it is well known that in the midst of sweet dishes something briny, something salty adds to the taste. I have listened very carefully during the last three days to the criticisms that have been advanced. My task has been greatly lightened by the intervention of my friends, colleagues in the Drafting Committee—I mean Sir Alladi Krishnaswamy Ayyar and Mr. Madhava Rau—in this debate. The criticisms that were levelled against our labours boil down really to three only, one that we have travelled far beyond our jurisdiction, secondly that we have flouted the opinions expressed by various committees by not accepting their recommendations, and thirdly, that we had made a discrimination between the provinces and the Indian States. Sir, if human memory is short, official memory is shorter still. The Drafting Committee is not self-existent. It was created by a Resolution of this House in August 1947, if I remember a right. I personally was lying seriously ill at the time and I could not attend that session. But, Sir, I find from the proceedings that as the Drafting Committee has been asked to frame the Constitution within the four corners of the Objective Resolution, we will be met with the criticisms which we have heard now. Wise men even in those days had anticipated this and to the official Resolution an amendment was moved by the learned Premier of Bombay, Mr. Kher, wherein we are given this direction. I will read from his speech. He moved an amendment to the original Resolution for Constituting this Drafting Committee and there he said—"That the Drafting Committee should be charged with the duties of scrutinising 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". This was his amendment. In his speech he said:

> "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 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 upto now. 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."

That was the amendment which was accepted by the House. Sir, after this amendment of the Honourable Mr. Kher which was accepted by the House, it does not lie in the mouth of the Members of the Constituent Assembly to say that we have gone far beyond our jurisdiction.

Shri Biswanath Das : Sir, May I know whether this direction includes the accepting of Committee's reports, modification of such reports and rejection of important recommendations of such Committees?

Syed Muhammad Saadulla : I would request the Honourable Mr. Das, ex-Premier of Orissa, not to disturb me during the course of my speech.

I propose to meet his ground towards the end of my statement. I will also make the same request to other Honourable Members of the House, for otherwise I will lose the trend of my thought. I am not a seasoned orator like my friends here, and I speak from no notes. So I would appreciate their silence. If they want to ask me any questions, I will gladly reply to them if I can at the end of my speech.

The yard stick to measure the contents of the Draft Constitution is really the Objectives Resolution that was accepted by this House universally when it was moved by our learned Prime Minister. That Objectives Resolution contained only eight Articles, the last of which need not find a place in a Constitution. Let anyone here say that we have not conformed to the principles that are enunciated by that Objectives Resolution. We cannot say that those eight Articles form our Constitution: they gave us the barest skeleton. The Drafting Committee was charged with the duty of filling in the canvas and producing a complete picture of what the Constitution should be. At the time of moving that Objectives Resolution our popular Prime Minister said that this is an expression of our dream, this is the target of our aspirations and that it is nothing but a "Declaration". A declaration in such bold terms cannot form a Constitution. Therefore the Assembly, at the instance of Government—for the Resolution was moved by the then Chief Whip of the Government party—decided that the actual framing of the Constitution should be left in the hands of the Committee. I personally had no hand in my inclusion in that Committee. As a matter of fact, very strenuous attempts were made to oust me from the personnel of the Drafting Committee. I see from the proceedings that our stalwart friend Mr. Kamath raised a technical objection that I was not a Member of the Constituent Assembly at the time when my name was proposed. Probably he took that ground without knowing the facts. I was a Member of the Constituent Assembly from the very first. But he was correct that after the referendum in the districts of Sylhet, part of Sylhet was transferred to Eastern Pakistan, and the number of Members to be sent from Assam to the Constituent Assembly had to be reduced and there was a fresh election. But if I remember a right at this distance, we were electing Members of the Constituent Assembly, in the Provincial Legislative Assembly in August 1947, and, if I remember a right, I was again elected a Member at the time when Mr. Kamath had raised that technical objection.

Shri H. V. Kamath : On a point of personal explanation, Sir. My point was that my Honourable friend Mr. Saadulla had not taken his seat in the Assembly; he had not taken the oath nor signed the Register, and therefore he was not a Member of the Assembly technically.

Syed Muhammad Saadulla : Sir, in spite of my request Mr. Kamath has chosen to interrupt me.

Shri M. Thirumala Rao : May I know how all this is relevant to the subject under discussion?

Mr. Vice-President : Let us proceed with the subject.

Syed Muhammad Saadulla : Sir, what I was driving at was that these people of the Drafting Committee were really elected by the unanimous vote of the Constituent Assembly, and it does not lie in the mouth of anyone now to say that they are not competent, that they did not belong to a certain party, and that barring one none of the Members had the hall-mark of jail delivery. How can I tell Honourable Members that we toiled and moiled that we did our best, that we ransacked all the known Constitutions, ancient and recent from three different continents, to produce a Draft which has been termed to be nothing but patch-work? But those who are men of art, those who love crafts, know perfectly well that even by patch-work, beautiful patterns, very lovable designs can be created. I may claim that in spite of the deficiencies

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in our Draft we have tried to bring a complete picture, to give this Honourable House a document as full as possible which may form the basis of discussion in this House. The Drafting Committee never claimed this to be the last word on the Constitution, that its provisions are infallible or that these Articles cannot be changed. The very fact that this Draft has been placed before this august House for final acceptance shows that we are not committed to one policy or the other. Where we had differed from the recommendations of Committees, or where we had the temerity to change a word here or a word there from the accepted principles of this august House, we have given sufficient indication in foot-notes, so that nothing can be put in surreptitiously there. The attention of the House has been drawn so that their ideas may be focussed on those items in which the Drafting Committee thought that they should deviate from the principles already accepted or from the recommendations of the Committees.

As regards the Committees, we were in a difficult position. Some Committees' recommendation of the *ad-hoc* Committee on the Centrally Administered Areas and a decision was taken, but reports of certain other Committees—notably the Financial Experts Committee or the Centrally Administered Areas Committee—were not placed before the House. They could not be discussed by the Honourable Members and no decision could be arrived at. We have taken liberty in the Drafting Committee to put our own view on some matters. If we have done it, we have done it with the best of intentions. As regards two other matters, I will elaborate a little later, but please for God's sake, do not go with the uncharitable idea that the Drafting Committee were not amenable to the vote of this House.

The main point of criticism, at least in regard to those two Committees, is firstly that the Drafting Committee did not give any consideration to the recommendation of the *ad- hoc* Committee on the Centrally Administered Areas. We had very able exponents from those areas—Delhi and Ajmer-Merwara. We listened with the greatest respect, but we have heard the criticism on the very floor of this House that India should not multiply very small localities and convert them into units of the Union. We had the recommendations of this *ad-hoc* Committee before us but we were perplexed what to do with them. Take Delhi, for example. It has got a population of 20 lakhs. If it is converted into a separate unit—and it cannot but be separated into a distinct unit, call it Lieutenant Governor's province or put it under the Centre—in that case, what are we to do with the other localities which are now centrally administered, Ajmer-Merwara, for instance? According to 1941 census figures, Ajmer-Merwara had only 6 lakhs population, but Mr. Mukut Bihari Bhargava was good enough to tell me now that the population has increased to 9 lakhs. Let us put the present population at 10 lakhs. In that case, if we give a separate Lieutenant Governor's province to Delhi, how can we refuse it to Ajmer-Merwara? Then what about Coorg? It is another centrally administered locality with a population of less than 2 lakhs. Then again there is the Andaman islands which also boasts of a Chief Commissioner. Therefore, we thought it best that this matter should be left to be decided by the bigger body—the Constituent Assembly. Were we wrong in adopting this course? We drew specific attention of this august Assembly to this in Part VII of the Draft Constitution. In the foot-note there you will find that we have said :

"The Committee is of opinion that it is not necessary to make any detailed provisions with regard to the Constitution of the States specified in part II of the First Schedule which are at present Chief Commissioner's provinces on the lines suggested by the *ad-hoc* Committee on Chief Commissioner's provinces in their recommendations. The revised provisions proposed in this part would enable the recommendations of the *ad-hoc* Committee, if adopted by the Constituent Assembly, to be given effect to by the President by order."

If we wanted to neglect these areas, if we wanted to give a cold shoulder to their aspirations, we would not have said that it is up to the Constituent Assembly whether they should give them a constitution on the lines recommended by the *ad hoc* Committee.

I now come to the greater charge—of practically refusing to accept the recommendations of the Experts Finance Committee. I can quite appreciate—nay, sympathize—with all those members from East Punjab, West Bengal, Orissa and Assam who have criticised this part of our recommendations. But I would leave it to the decision of this august House to judge whether the provisions that we have made are not far better ultimately than the recommendations made by the Expert Finance Committee. I was surprised to hear one particular criticism from an Honourable Member from Madras that we were either careless in going through those recommendations or we were incompetent to appreciate the principles underlying them. To both of these accusations I register an emphatic "No". On the other hand, we gave the closest attention to the recommendations of the Expert Committee. I will show from their report as well as by figures that if the recommendations of that Committee had been accepted, the provinces will stand to lose, especially the poorer provinces like Assam, Orissa and Bihar. Again, it is not correct to say that the Drafting Committee has not accepted the majority of the recommendations of the Expert Finance Committee. I have that Committee's report in my hands and anybody who has it in his hands will find that on page 41, Appendix VI, the Committee recommended certain amendments in the Draft Constitution. I am glad to say that 95 per cent of those amendments have been accepted by the Drafting Committee and will be found in our provisions. What we did not accept is the figures that the Expert Finance Committee suggested that we should include in our recommendations.

Now, to turn to specific points, first I take the recommendation of the Expert Committee regarding the share in the jute export duty which is now available to the jute-growing provinces of India. This subject is very vital for the Republic of India. Jute, as is known, is the world monopoly of these four provinces only. I am glad to see from Press reports that attempts are being made to grow jute in Madras, but taking the position as it is, the undivided Bengal used to produce 85 per cent of the world's jute, Bihar 7 per cent, Assam 6 per cent and Orissa 2 per cent but these proportions have been changed by the partition of Bengal into East and West Bengal.

East Bengal used to produce 75 per cent of the total jute produced in Bengal. Therefore the present West Bengal produces only 10 per cent or 12 per cent of world jute. This position has changed the percentages of Assam, Bihar and Orissa. Yet, what do we find in the recommendations of the financial Experts' report? Their recommendation is that the share—which under the Government of India Act of 1935, is $62^1/_2$ per cent of the proceeds of the jute export duty which was given to the four provinces—should be stopped. No money should be given on this account to the provinces. But they realised that the poor provinces will be hard hit and therefore recommended that for ten years, the contribution should be made by the Government of India *ex-gratia* and in the following proportion:—

West Bengal—one crore,

Assam—fifteen lakhs,

Bihar—seventeen lakhs and

Orissa—three lakhs.

Now, I request this Honourable House to consider seriously whether this distribution is just or equitable for a province like Assam or a province like Orissa or Bihar. Bihar has got its production ratio increased from 7 per cent

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to very nearly 35 per cent of the jute grown in India now. Similarly the percentage for Assam has gone up to 30 percent and proportionately for Orissa. Yet, the Financial Expert Committee wants to perpetuate the injustice that was done during the bureaucratic days and divide the proceeds in the same fashion, giving West Bengal which produces only 10 or 12 per cent of the total jute production as much as one crore.

One argument advanced by the Committee is that jute may be grown in the other provinces, but the mills converting the jute into finished products are situated in Bengal. It is perfectly correct that the export duty is levied not only on raw jute but also on the finished product. But consider the effect. West Bengal cannot increase its acreage. There, all the available waste lands are being requisitioned for refugees from East Pakistan. If any province can increase jute production it is Assam and Orissa. But if we do not get any return, if the share in the jute export duty is stopped, what is the incentive for Assam to increase the jute acreage? Jute is vital for India in the sense that all the jute produced in West Bengal is sold either to the continent of Europe or America by means of which we get the much-needed sterling or dollar exchange. If tomorrow the provinces of Assam and Orissa cease to produce jute, the jute mills in Bengal would not have anything to do and they will have to close down. It is on this account that the Drafting Committee thought that we should not accept those recommendations of the Expert Committee and let the *status quo* run.

The next recommendation of the Expert Finance Committee is that, in order to make up the loss which these provinces will suffer by the stop in the share of jute export duty, the Government of India which now shares on a 50-50 basis the income-tax from the provinces should increase the divisible pool of the provinces to 60 per cent or an increase of 10 per cent. Sir, most Honourable Members here do not know how unjustly and iniquitously this provision of division of income-tax has fallen on the poor provinces of Bihar and Assam. Bihar produces the raw material; Bihar has the gigantic steel works and offices, but their head offices are all in Bombay and hence the income-tax is paid in Bombay. Bihar therefore does not get any credit for this income-tax. Bihar has been crying hoarse to get this changed, but has been unsuccessful so far. In Assam, the condition is worse. Before Partition, Assam had some 1,200 tea gardens Even after the removal of a large part of Sylhet to East Pakistan, Assam has got a thousand tea gardens. That is the only organised industry of Assam. But out of those 1,000 tea estates, the head offices or the offices of the managing agents of as many as 800 are in Calcutta or London. Up till now, Assam has been making insistent prayers to the Central Government from the time this system was introduced to change the system. The division under this system is on the basis of collection and not of origin.

Now, do you think, Sir, that if we accept this provision of the Finance Committee, justice would be meted out to Bihar and to Assam? We wanted revision of the entire system and the Finance Committee was compelled to accept the force of our arguments. But they tried to compromise and their compromises are put down in Section 55 of their recommendation.

They say: "We recommend that the provincial share, that is 60 per cent of the net proceeds, be distributed among the provinces as follows: —

20 per cent on the basis of population,

35 per cent on the basis of collection, and

5 per cent in the manner indicated in paragraph 56."

Paragraph 56 says: "The third block of 5 per cent should be utilised by the apportioning authority as a balancing factor in order to modify any hardship

that may arise in the case of particular provinces as a result of the application of the other two criteria."

Sir, of the present provinces, after the merger of the native States with Orissa, Assam is the least populated provinces in India. We had a population according to the 1941 census of 102 lakhs, but now the population has dwindled to 72 lakhs. The population of Orissa has increased. Therefore if twenty per cent of the divisible pool of income-tax is divided on population basis, we get very little. Rather, Assam would get a reduced sum.

Then they say that 35 per cent should be distributed on the basis of collection. This way both Assam and Bihar will suffer, because the place of collection in the case of Assam is Calcutta and for Bihar, Bombay and naturally the major portion of the 60 per cent will go away from the provinces concerned. Only a little 5 per cent is left to mitigate any hardships that may arise in the case of particular provinces. Ours has been a cry in the wilderness; our voices are never heard at the Centre. However hoarse we may cry and however much our Premier may try, we do not get a hearing. Therefore, the Drafting Committee thought that it is not in the interests of the poorer provinces to accept this recommendation of the Expert Committee.

Again, the Committee has stated that the excise duty on tobacco should be divided amongst the provinces on the basis of estimated consumption. That would not help either Assam or Orissa for want of numbers. Although the Expert Committee made a reference about this in their main recommendations, they omitted this from the list of amendments which they have put down in Appendix VI. Therefore when they themselves have not recommended this, no blame can be attached to the Drafting Committee if they have not adopted it.

Lastly, Sir, the Expert Committee recommended that there should be a Finance Commission appointed immediately to go into the finances of the provinces and the Centre. We have not accepted that it should be appointed immediately because we felt that the appointment of such a Commission at this juncture would be fair neither to the provinces nor to the Central Government. Moreover, they will have nothing to go by. The Expert Committee themselves have stated:

> "In this country the lack of sufficient economic and financial statistics and other similar data is a great handicap. Therefore, the allocation of resources has to be made largely on the basis of a broad judgment, at any rate until the necessary data become available. We attach great importance to the collection of these statistics and to connected research, and trust that the Government will make the necessary arrangements without delay....."

An Honourable Member : For how long does the Honourable Member propose to continue? Is there no time limit for him?

Syed Muhammad Saadulla : I am finishing in a few minutes, if my friends will allow me.

Mr. Vice-President : I think he is entitled to as much time as he wants in order to answer the various criticisms that have been levelled against the Drafting Committee. Surely you should give him time to do it.

Syed Muhammad Saadulla : We find that even on the recommendation of the Expert Committee, there are no data available at the present moment. From the figures which they have published at page 27 of the brochure, we find that the Central Government's budget has been a deficit one continuously since 1937-38. According to the revised estimate for 1946-47, their deficit is a small one of about 45 lakhs, but I am sure, Sir, that when the final figures are published, the deficit will increase. That is the reason why, I presume, the Central Government without consulting the provinces concerned, by a stroke of the pen, have reduced the share of the Jute Export Duty to these four provinces from $62^{1}/_{2}$ per cent. to 20 per cent. They would not have taken this extraordinary step if they were not hard-pressed for finance.

The Honourable Shri K. Santhanam (Madras: General): On a point of order, Sir, the Drafting Committee, I suggest, have nothing to do with the Government of India's financial administration. I think the Honourable Member should confine his remarks to the Constitution itself.

Syed Muhammad Saadulla : But, Sir, the Drafting Committee has been charged with neglect in this matter.

For the past ten years the Government of India themselves are having deficit budgets, and now they are incurring very huge expenditure on the rehabilitation of refugees, the war in Kashmir and the police action in Hyderabad. On account of these, they are not in a position to give sufficient help to the provinces, whereas the provinces are crying hoarse over the financial neglect from the Centre. Sir, I will just address one point about the particular position of Assam, as Assam's position is not appreciated by most Members of the House. It is not merely a frontier province of the Republic of India but it is a bulwark against aggression from the East. (Interruption).

Sir, if you do not allow me to speak I am subjecting myself to your Ruling. But I wish to say a few words as a Member coming from Assam.

Mr. Vice-President : You are speaking as a Member of the Drafting Committee.

The Honourable Shri B. G. Kher (Bombay: General) : May I suggest that he may continue this subject tomorrow, so that we may have more time?

Syed Muhammad Saadulla : I bow to your ruling, Sir, I thought that I have my three functions before this House, as a member of the Drafting Committee, also as a member from the neglected and benighted province of Assam and also as coming from the Muslims. I wanted to speak just two things about Assam and the Muslims, but I will reserve it for a future occasion.

Mr. Vice-President : I understand that Mr. Kamath had some kind of amendment. Is the Honourable Member pressing it?

Shri H. V. Kamath : I am not pressing it, as it is purely of a verbal nature.

Mr. Vice-President: The question is:

"That the Constituent Assembly do proceed to take into consideration 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."

The motion was adopted.

Mr. Vice-President : I have to say something about our future programme of work. Naturally we shall get two days, tomorrow and the day after, for submitting amendments. I understand that a Member had written a letter to our President, asking for ten days' time. It is impossible to grant this extension of time without seriously jeopardizing the existing programme which we have set ourselves to fulfil. So the last date will be Thursday and the time 5 P.M. on the 11th.

I further understand that already three thousand amendments have been received and I am quite certain that within the next two days further amendments will come in. I take my courage in my hands and make a suggestion for the consideration of the House. It is this: that instead of trying to go through the amendments one by one on the floor of the House, it would be much better for those who have suggested these amendments to meet the Drafting Committee as a whole or certain members of the Drafting Committee and to discuss matters. In this way it is possible to expedite the work. It is for you to reject it at once without listening to my suggestion or to come to some sort of understanding. It may be that the Drafting Committee may

be persuaded to accept certain amendments; it is quite possible on the other hand that certain amendments will not need any further consideration. If this meets with your approval, then I suggest that the arrangement may come into effect from, say, Friday and the time fixed by 10-30 A.M.

Shri T. T. Krishnamachari (Madras : General): May I ask, Sir, if the Drafting Committee is in existence?

Mr. Vice-President : It may not be in existence, but the people in it are very much alive and they are prepared to take this trouble in order to reduce the work of the House.

Prof. N. G. Ranga : I dare say you are aware of the system that we have followed in the past. Anyhow so far as those people who belong to the Indian National Congress are concerned and those who are associated with it, we used to meet every day for three or four hours in order to lessen this work as you have suggested and make it easier for you to get through the allotted work. In addition to this, if we are to accept your suggestion it would mean that we would have to be sitting here with the Drafting Committee and beg them to accept this amendment or that. In addition we would have to meet again for three or four hours every day. Therefore, I wish to submit to you with all respect that this suggestion will not be very practicable and may not be quite acceptable to several of us. Therefore, we would like you to relieve us from this suggestion.

Shri R. K. Sidhwa (C.P. and Berar : General): I endorse the suggestion made by Prof. Ranga. The suggestion made is certainly not practicable and it is better to leave the Members to help expediting these amendments. I therefore suggest that the usual practice may prevail and the Members should be given the right to move their amendments in this House if they do not come to an agreement with the Drafting Committee.

Mr. Vice-President : If you do not agree, then you need not accept the suggestion. Further, the Drafting Committee is not defunct.

There is something more. Friday will be a closed holiday on account of Mohurram and the Honourable the President has given us Saturday to consider for the study of amendments, so that we shall meet on Monday the 15th at 10 A.M.

Shri H. V. Kamath : On a point of procedure, may I know whether the preamble will be taken first or last?

Mr. Vice-President : I am not in a position to give any decision on the matter.

The Assembly then adjourned till Ten of the Clock on Monday, the 15th November, 1948.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 15*th November,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

1. **Shri P. S. Nataraja Pillai** (Travancore).

DRAFT CONSTITUTION—*(Contd.)*

Mr. Vice-President (Dr. H. C. Mookherjee) : Maulana Hasrat Mohani.

Maulana Hasrat Mohani (United Provinces : Muslim) : Sir, I beg to state that on the 6th November, I have notice of an amendment to this effect :

"That the consideration of the Draft Constitution clause by clause be postponed till after it has been finally decided which of the following three sets of words are to be incorporated in the Preamble of the same—

Sovereign Independent Republic,

Sovereign Democratic Republic,

Sovereign Democratic State."

It has not yet been decided which of these three sets is to be incorporated in the Constitution, and yet I understand that the Congress Party has decided to consider this Constitution, clause by clause, without deciding the most important question of what words should be there—Republic or State, in the Preamble.

I have a complaint to make. All the amendments of which notice was given to your office have been printed, but my amendment has been left out. May I know the reason why this has been left out?

Mr. Vice-President : I understand that this has come about at as a result of the form of procedure, and the amendment is out of order. I am fortified in my decision by what I am told is the procedure adopted in the House of Commons where the Preamble comes last of all.

Maulana Hasrat Mohani : May I point out one thing, Sir? On a previous occasion, when the same thing was done by me, it was decided by the President of the Constituent Assembly, and he has definitely given a ruling that my amendment to this very effect which I have proposed today, was in order. He has definitely said so. I may read out his very words which have been printed in the official report—

"I think the amendment is in order. It is open to the House to throw it out."

So I have every right to propose my amendment. Of course, it is open to the House to accept it or reject it. So I say this thing has been settled by the President. If you like you may ask the President if it is a correct ruling or not.

Again, when the Union Constitution was presented before this House in July, on that occasion also, I raised objection to this very effect, and then also the President of the Constituent Assembly definitely said that my amendment cannot be ruled out of order. If you like, I may read out his exact words:

"I actually give a promise that whenever you move an amendment to that effect, it will not be ruled out of order."

[Maulana Hasrat Mohani]

So I request you not to rule me out of order, as it has been finally decided by the President that my amendment should be allowed. Of course, it is open to the House to accept or reject it, as on a previous occasion, when the Union Constitution was proposed by Pandit Nehru. It is very unfortunate that instead of Pandit Nehru, we have today Dr. Ambedkar. I think he has reversed the whole order of the business. I submit I have got every right to request you to protect my rights and allow me an opportunity to give my reasons for what I say. Of course, if the House is not willing to accept my amendment, the House can throw it out, as it did on a previous occasion. But I think I must not be discouraged in this way. My right to move any amendment must be protected.

Mr. Vice-President : I make a distinction between the time when the Preamble is to be considered and your right to move an amendment. When the time comes, you have, of course, every right to move your amendment. My ruling is that the Preamble is not to be taken up first of all. That is final.

Now we propose to take up the discussion of the Draft Constitution, clause by clause.

Shri Algurai Shastri (United Provinces: General): *[Mr. President, before you take up the consideration of this constitution, I want to draw your attention to an important matter. Have I your permission to do so?]

Mr. Vice-President : Please come to the mike.

Shri Algurai Shastri : *[Mr. President, I want to submit that two or three days back a report appeared in the papers that many Hindu Members of the Sind Assembly had been unseated because a large number of Sindhis had left Sind and had come over to India. Those people who have come to India appear to be fourteen lakhs in number and therefore, it appears to be necessary that these Sindhi brothers, who were compelled to leave their place and have come here leaving behind their homes and hearths, should find some representation in this Assembly. We are going to frame a constitution for the whole of India. In framing that constitution it is necessary that these brothers, who have been compelled to leave their homes, should find some representation. I want that some such arrangement may be made as may enable those people who have come here from Sind to get representation in this House. If you permit us, we shall move a regular resolution to that effect so that those people may be represented in this House.]

Mr. Vice-President : This question cannot be taken up here.

It seems that I made a mistake in the procedure to be adopted. What I have to say now is that Article 1 should stand as part of the Constitution.

I understand that there is something to be said on this matter by our friend Mr. Ayyangar. As regards the amendments, he has certain proposals to make.

ARTICLE 1.

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I submit that amendments Nos. 83 to 96, both inclusive, may kindly be allowed to stand over. They relate to the alternative names, or rather the substitution of names—Bharat, Bharat Varsha, Hindustan—for the word India, in Article 1, clause (1).

It requires some consideration. Through you I am requesting the Assembly to kindly pass over these items and allow these amendments to stand over for some time. A few days later when we come to the Preamble these amendments might be then taken up. I am referring to amendments Nos. 83 to 96, both inclusive, and also amendment No. 97 which reads:

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*[ ] Translation of Hindustani speech.

"That in clause (1) of article 1, for the word 'India' the word 'Bharat (India)' and for the word 'States' the word 'Provinces' be substituted."

So I would like all these to stand over.

Mr. Vice-President : Is that agreed to by the House?

Honourable Members : Yes.

Shri Lokanath Misra (Orissa : General): Of course I would have no objection, Sir, if you defer consideration of these amendments for two or three days, but I beg to bring to your notice that amendment No. 85, which stands in my name, does not only mean to change the name of India into 'Bharatavarsha', but it means something more and I am afraid if you hold over this amendment those things would be inappropriate at a later stage. I am submitting that I may be allowed to move this amendment, of course without committing myself to the change of the name of India to 'Bharatavarsha' or otherwise. Though I am not insisting on the change of name just now, I ask that I may be allowed to move the other part of my amendment.

Shri M. Ananthasayanam Ayyangar : My request was that amendments relating only to the name may stand over and in his case on the understanding that the word 'India' be changed to some other name, he may move his amendment. I am not asking that the other portion of this amendment may not be moved.

Mr. Vice-President : So the Honourable Member may take the opportunity of moving the second part of his amendment at the proper place.

Now we shall go to the amendments. Amendment No. 98 stands in the name of Professor K.T. Shah.

Prof. K.T. Shah (Bihar : General): Sir, I beg to move:

"That in clause (1) of article 1, after the words 'shall be a' the words 'Secular, Federal, Socialist' be inserted."

and the amended article or clause will read as follows:

"India shall be a Secular, Federal, Socialist Union of States."

In submitting this motion to the House I want first of all to point out that owing to the arrangements by which the Preamble is not considered at this moment, it is a little difficult for those who would like to embody their hopes and aspirations in the Constitution to give expression to them by making amendments of specific clauses which necessarily are restricted in the legal technique as we all know. Had it been possible to consider the governing ideals, so to say, which are embodied in this Preamble to the Draft Constitution, it might have been easier to consider these proposals not only on their own merits, but also as following from such ideals embodied in the preamble as may have been accepted.

As it is, in suggesting this amendment, I am anxious to point out that this is not only a statement of fact as it exists, but also embodies an aspiration which it is hoped will be soon realized. The amendment tries to add three words to the description of our State or Union : that is to say, the new Union shall be a Federal, Secular, Socialist Union of States. The Draft Constitution, may I add in passing, has rendered our task very difficult by omitting a section on definitions, so that terms like "States" are used in a variety of meanings from Article to Article, and therefore it is not always easy to distinguish between the various senses in which, and sometimes conflicting senses in which one and the same term is used. I take it, however, that in the present context the word "Union" stands for the composite aggregate of States, a new State by itself, which has to be according to my amendment a Federal, Secular, Socialist State.

[Prof. K. T. Shah]

I take first the word 'Federal'. This word implies that this is a Union which however is not a Unitary State, inasmuch as the component or Constituent parts, also described as States in the Draft Constitution, are equally parts and members of the Union, which have definite rights, definite powers and functions, not necessarily overlapping, often however concurrent with the powers and functions assigned to the Union or to the Federal Government. Accordingly it is necessary in my opinion to guard against any misapprehension or misdescription hereafter of this new State, the Union, which we shall describe as the Union of India.

Lest the term 'Union' should lead anyone to imagine that it is a unitary Government I should like to make it clear, in the very first article, the first clause of that article, that it is a 'federal union'. By its very nature the term 'federal' implies an agreed association on equal terms of the States forming part of the Federation. It would be no federation, I submit, there would be no real equality of status, if there is discrimination or differentiation between one member and another and the Union will not be strengthened, I venture to submit, in proportion as there are members States which are weaker in comparison to other States. If some members are less powerful than others, the strength of the Union, I venture to submit, will depend not upon the strongest member of it, but be limited by the weakest member. There will therefore have to be equality of status, powers and functions as between the several members, which I wish to ensure by this amendment by adding the word 'Federal'.

So far as I remember, this word does not occur any where in the constitution to describe this new State of India as a Federation and this seems to me the best place to add this word, so as to leave no room for mistake or misunderstanding hereafter.

Next, as regards the Secular character of the State, we have been told time and again from every platform, that ours is a secular State. If that is true, if that holds good, I do not see why the term could not be added or inserted in the constitution itself, once again, to guard against any possibility of misunderstanding or misapprehension. The term 'secular', I agree, does not find place necessarily in constitutions on which ours seems to have been modelled. But every constitution is framed in the background of the people concerned. The mere fact, therefore, that such description is not formally or specifically adopted to distinguish one State from another, or to emphasis the character of our State is no reason, in my opinion, why we should not insert now at this hour, when we are making our constitution, this very clear and emphatic description of that State.

The secularity of the State must be stressed in view not only of the unhappy experiences we had last year and in the years before and the excesses to which, in the name of religion, communalism or sectarianism can go, but I intend also to emphasis by this description the character and nature of the State which we are constituting today, which would ensure to all its peoples, all its citizens that in all matters relating to the governance of the country and dealings between man and man and dealings between citizen and Government the consideration that will actuate will be the objective realities of the situation, the material factors that condition our being, our living and our acting. For that purpose and in that connection no extraneous considerations or authority will be allowed to interfere, so that the relations between man and man, the relation of the citizen to the State, the relations of the States *inter se* may not be influenced by those other considerations which will result in injustice or inequality as between the several citizens that constitute the people of India.

And last in term 'socialist', I am fully aware that it would not be quite a correct description of the State today in India to call it a Socialist Union. I am afraid it is anything but Socialist so far. But I do not see any reason why we should not insert here an aspiration, which I trust many in this House share with me, that if not today, soon hereafter, the character and composition of the State will change, change so radically, so satisfactorily and effectively that the country would become a truly Socialist Union of States.

The term 'socialist' is, I know, frightening to a number of people, who do not examine its implications, or would not understand the meaning of the term and all that it stands for. They merely consider the term 'socialist' as synonymous with abuse, if one were using some such term, and therefore by the very sound, by the very name of it they get frightened and are prepared to oppose it. I know that a person who advocates socialism, or who is a declared or professed socialist is to them taboo, and therefore not even worth a moment's consideration.....

Seth Govind Das (C.P. and Berar : General): It is absolutely wrong.

Prof. K. T. Shah : Thank you. If the assurance given by some friends is correct, I hope the House would have no objection to accept this amendment. I trust that those friends here who are very loud in this assertion will induce others in the House to set aside party barriers, and support me in this promising description, this encouraging epithet of the State.

By the term 'socialist' I may assure my friends here that what is implied or conveyed by this amendment is a state in which equal justice and equal opportunity for everybody is assured, in which every one is expected to contribute by his labour, by his intelligence, and by his work all that he can to the maximum capacity, and every one would be assured of getting all that he needs and all that he wants for maintaining a decent civilised standard of existence.

I am sure this can be achieved without any violation of peaceful and orderly progress. I am sure that there is no need to fear in the implications of this term the possibility of a violent revolution resulting in the disestablishment of vested interests. Those who recognise the essential justice in this term, those who think with me that socialism is not only the coming order of the day, but is the only order in which justice between man and man can be assured, is the only order in which privileges of class exclusiveness property for exploiting elements can be dispensed with must support me in this amendment. It is the only order in which, man would be restored to his natural right and enjoy equal opportunities and his life no longer regulated by artificial barriers, customs, conventions, laws and decrees that man has imposed on himself and his fellows in defence of vested interests. If this ideal is accepted I do not see that there is anything objectionable in inserting this epithet or designation or description in this article, and calling our Union a Socialist Union of States.

I have one more word to add. As I said at the very beginning this is not merely an addition or amendment to correct legal technicality, or make a factual change, but an aspiration and also a description of present facts. There are the words "shall be" in the draft itself. I therefore take my stand on the term "shall be", and read in them a promise and hope which I wish to amplify and definitise. I trust the majority, if not all the members of this House, will share with me.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. Vice-President, Sir, I regret that I cannot accept the amendment of Prof. K.T. Shah. My objections, stated briefly are two. In the first place the Constitution, as I stated in my opening speech in support of the motion I made before the

[The Honourable Dr. B. R. Ambedkar]

House, is merely a mechanism for the purpose of regulating the work of the various organs of the State. It is not a mechanism where by particular members or particular parties are installed in office. What should be the policy of the State, how the Society should be organised in its social and economic sides are matters which must be decided by the people themselves according to time and circumstances. It cannot be laid down in the Constitution itself, because that is destroying democracy altogether. If you state in the Constitution that the social organisation of the State shall take a particular form, you are, in my judgment, taking away the liberty of the people to decide what should be the social organisation in which they wish to live. It is perfectly possible today, for the majority people to hold that the socialist organisation of society is better than the capitalist organisation of society. But it would be perfectly possible for thinking people to devise some other form of social organisation which might be better than the socialist organisation of today or of tomorrow. I do not see therefore why the Constitution should tie down the people to live in a particular form and not leave it to the people themselves to decide it for themselves. This is one reason why the amendment should be opposed.

The second reason is that the amendment is purely superfluous. My Honourable friend, Prof. Shah, does not seem to have taken into account the fact that apart from the Fundamental Rights, which we have embodied in the Constitution, we have also introduced other sections which deal with directive principles of state policy. If my honourable friend were to read the Articles contained in Part IV, he will find that both the Legislature as well as the Executive have been placed by this Constitution under certain definite obligations as to the form of their policy. Now, to read only Article 31, which deals with this matter: It says:

> "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 economic system does not result in the concentration of wealth and means of production to the common detriment;
>
> (iv) that there is equal pay for equal work for both men and women;...."

There are some other items more or less in the same strain. What I would like to ask Professor Shah is this : If these directive principles to which I have drawn attention are not socialistic in their direction and in their content, I fail to understand what more socialism can be.

Therefore my submission is that these socialist principles are already embodied in our Constitution and it is unnecessary to accept this amendment.

Shri H. V. Kamath (C.P. and Berar : General): Mr. Vice-President, the amendment moved by my honourable friend, Prof. K. T. Shah is, I submit somewhat out of place. As regards the words 'secular and socialist' suggested by him I personally think that they should find a place, if at all only in the Preamble. If you refer to the title of this Part, it says, 'Union and its Territory and jurisdiction'. Therefore this Part deals with Territory and the jurisdiction of the Union and not with what is going to be the character of the future Constitutional structure.

As regards the word 'Union' if Prof. Shah had referred to the footnote on page 2 of the draft Constitution, he would have found that "The Committee considers that following the language of the Preamble to the British North America Act, 1867, it would not be inappropriate to describe India as a Union although its Constitution may be federal in structure". I have the Constitution of British North American before me. Therein it is said:

"Whereas the provinces of Canada, Nova Scotia, have expressed a desire to be federally united", but subsequently the word "federal" is dropped, and only the word "Union" retained. Similarly, in our Constitution the emphasis should be on the word 'Union' rather than on the word 'Federal'. The tendency to disintegrate in our body politic has been rampant since the dawn of history and if this tendency is to be curbed the word 'federal' should be omitted from this Article.

You might remember, Sir, that the content of Federation has been incorporated in the Constitution and we have various Lists prescribed for Union, etc. So long as the essence is there in the Constitution, I do not see any reason why the word 'Federal' should be specifically inserted here to qualify the word 'Union'. I therefore oppose the amendment of Professor Shah.

Mr. Vice-President : The question is:

"That in clause (1) of Article 1 after the words 'shall be a' the words 'Secular, Federal, Socialist' be inserted."

The motion was negatived.

Mr. Vice-President : I want to make one thing clear. After the reply has been given by Dr. Ambedkar, I shall not permit any further discussion. I have made a mistake once. I am not going to repeat it. (*Laughter*).

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim) : Mr. Vice-President, Sir, I move:

"That in clause (1) of Article 1 for the word 'States' the word 'provinces' be substituted."

You, Sir, will remember that when Dr. Ambedkar moved the motion for the consideration of this Draft Constitution, when he was dealing with the form of Government, he stated that.....

Mr. Vice-President : We do not want a discussion of this nature. I appeal to the Honourable Member to speak only if he has something new to say.

Mahboob Ali Baig Sahib Bahadur : Dr. Ambedkar stated, when dealing with the form of government, that there are two forms of government, one unitary and the other federal.

Shri K. Hanumanthaiya (Mysore): On a point of order, Sir. We have already voted down the amendment of Prof. K. T. Shah. It contained the word "Federation" and the House has already given its decision on that question. If the mover of the present amendment moves his amendment, the House would be reconsidering the same question. Therefore, in view of the fact that this amendment, was already covered by the previous amendment and discussion and voting had taken place on it, I think he is out of order in moving this amendment. I hope the Chair will use its discretion in the matter so that we may do our work quickly.

Mr. Vice-President : I agree with you in thinking that the question has been discussed, but I think he is still in order if he insists on moving this particular amendment.

Mahboob Ali Baig Sahib Bahadur : Dr. Ambedkar asserted that in the Draft Constitution the government that is proposed is federal and not unitary, but subsequently he stated that nothing turns upon the term used, whether you call it a Union or a Federation. He further went on to say that the word 'Union' has been used advisedly so that the constituent parts may not have the freedom to get out. I take it that I am correct in interpreting the view taken by Dr. Ambedkar. Now, Sir, a Constitution is either unitary or federal, but if the framers of the Draft Constitution had in the back of their minds a unitary government and yet called it federal.....

Mr. Vice-President : Since the time at our disposal is short, please confine yourself strictly to the point.

Mahboob Ali Baig Sahib Bahadur : If Dr. Ambedkar says that the word "Union" was used not with any great significance, there is no reason why we should not use the correct word "Federation", but if on the other hand the word "Union" was used with a purpose so that in course of time this federal form of government may be converted into a unitary form of government, then it is for this House now to use the correct word so that it may be difficult in future for any power-seeking party that may come into power easily to convert this into a unitary form of government. So, it is for the House to use the correct word "Federation" instead of the word "Union". This is my justification, Sir, for moving this amendment. If you mean that the government must be a federal government and not a unitary government and if you want to prevent in future any power-seeking party to convert it into a unitary form of government and become Fascist and totalitarian, then it is up to us now to use the correct word, which is "Federation". Therefore, Sir, I move that the word "Federation" may be substituted for the word "Union".

The Honourable Dr. B. R. Ambedkar : I do not accept the amendment.

Mr. Vice-President : I now put the amendment to the vote.

The amendment was negatived.

Mr. Vice-President : Then Amendment No. 100 to be moved by Mr. Lari. I think it is covered by amendment No. 99. Does Mr. Lari insist on moving it? (Mr. Lari was not in the House). Then we pass on to amendment No. 101. Mr. Kamath.

Shri H. V. Kamath : I am moving only the second part of it, Sir. At the outset may I submit to you.....

Mr. Vice-President : What do you want to say, Mr. Ayyangar?

Shri M. Ananthasayanam Ayyangar : So far as this amendment is concerned, I do not want any postponement. I do not see any serious objection to the latter part of it being moved.

An Honourable Member : Amendment No. 104 is on the same subject, Sir.

Shri H. V. Kamath : At the outset, may I bring to your notice, Sir, that I originally sent this amendment separately as two amendments. Unfortunately the office has lumped them together into one. Had these amendments been printed separately, no difficulty would have arisen. The first amendment was to insert the word "Federal" before the word "Union", and the second was to substitute the word "Pradeshas" for the word "States".

May I now proceed to the amendment itself. The second part of the amendment only is before the House. I move, Sir:

"That for the word 'States' in clause (1) of Article 1 the word 'Pradeshas' may be substituted."

Shri C. Subramaniam (Madras : General) : On a point of order, Sir. This is not an amendment. The word "Pradeshas" is only a Hindi translation of the word "States". If we accept translations of words as amendments, it will create endless complications. The Draft Constitution is in the English language and we should adhere to English terminology and not accept other words, whether they be from Hindi or Hindustani.

Mr. Vice-President : May I point out that it is not really a point of order, but an argument against the use of the word "Pradeshas"? Please allow Mr. Kamath, if he so wishes, to address the House.

Shri H. V. Kamath : I am glad, Sir, that several friends have already made their observations, because that shows how much interest the House is taking in this matter. So I now proceed fortified by that conviction. My reasons for substitution of the word "State" by the word "Pradesha" are manifold. Firstly, I find that in this Draft Constitution, the word "State" has been used in more

senses than one. May I invite your attention and the attention of the House to Part III, Article 7, where it is stated: " 'The State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India." Here we use the word "State" in quite a different sense. So the first reason for my amendment for the substitution of the word "State" by the word "Pradesha" is to avoid this confusion which is likely to arise by the use of the word "State" in different places in different senses in this Constitution. Secondly, Sir, I hope my suspicion or my doubt is wrong, — but I feel that this word "State" smacks of a blind copying or imitation of the word "State" which you find in the Constitution of the United States. We have been told by Dr. Ambedkar in his first speech on the motion for the consideration of the Draft Constitution that we have borrowed so many things from various constitutions of the world. Here it strikes me that the word "State" has been borrowed from the Constitution of the U.S.A. and I am against all blind copying or blind imitation. Thirdly, Sir, looking at our own history, at least during the last 150 years, the word "State" has come to be associated with something which we intensely dislike, if not abhor. The States in India have been associated with a particular type of administration which we are anxious to terminate with the least possible delay and we have already done so under the sagacious leadership of Sardar Patel. Therefore, this malodorous association with the British regime, which, happily, is no more, I seek to get rid of through this amendment which I have moved before the House. To those friends of mine, who are sticklers for the English language, who think that because this Constitution has been drafted in English, we should not bring in words that are our own, I should like to make one submission and that is this, that the bar to my mind is not against all words that are indigenous, that are Hindi or Indian in their etymological structure. I am reading from the "Constitutional Precedents", regarding the Constitution of the Irish Free State—it was adopted in 1937—which was supplied to us a year and half ago by the Secretariat of the Assembly. If we turn to page 114 of this Constitutional Precedents, we find there is a footnote on that page to this effect:

"Also in the Irish language."

This means that the Constitution of 1937 was adopted firstly in English, because the footnote says it was adopted also in the Irish language. That means to say that originally it was adopted in the English language and later on adopted in the Irish language. If you look at the Constitution of Ireland, we find so many Irish words and not English words, words like—I do not know how they are pronounced in the English language—Oireachtas, Dail Eireann, Taois each (for the Prime Minister) and Seanad Eireann. All these words are purely Irish words and they have retained these words in the Irish Constitution adopted in the English language, and they did not bother to substitute the equivalent words in the English language. Therefore it is for this House to decide what words we can incorporate in our Constitution though they are Indian, Hindi or any other language of our country.

So, Sir, for the reasons that I have stated already the word "State" should never be used in our Constitution in this context. Firstly, because it smacks of blind imitation. Secondly, because of its association with a regime which, by our efforts and by the grace of God, we have put an end to. I will make one other submission, Sir. In the new integrated States—former States or Indian States which we have been able to unite into one unit—we have already used the word "Pradesh", and we have called the Himachal Union as the Himachal Pradesh and the Vindhya Union as the Vindhya Pradesh, and there is a movement afoot in Assam to call the union of States there as Purbachal Pradesh.

[Shri H. V. Kamath]

Another point is that we are going to constitute provinces on a new basis in the near future. Already the provinces of Madras, of C.P. and of Bombay have got merged in themselves some of the former Indian States and so the new provinces are going to be different from the old Provinces and therefore the word "Pradesh" is much better and much more apt than the word "State".

Sir, the last point that I want to make is this. My friend Mr. G.S. Gupta has also tabled an amendment to this Article. That would arise only if my amendment is adopted. If this fails, the amendment of my friend will not arise. If my amendment is adopted, then certainly consequential changes will have to be made throughout the text of the Draft Constitution.

Therefore, I move this amendment, Sir:

"That in clause (1) of Article 1, for the word 'States' the word 'Pradeshas' be substituted."

and commend it to the acceptance of the House.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General): Sir, I would like to submit this with regard to my amendment. Mr. Kamath has given an amendment which only says that in clause (1) of article 1 for the word 'States', the word 'Pradeshas' be substituted. That would mean, that in other clauses, in other articles, the word may not be substituted. If that contingency arises, it may not be all right. Therefore, my amendment No. 104 may either be treated as an amendment to Mr. Kamath's amendment or I may be allowed to move it now, so that no further complication may arise. Because, it would be really absurd if the word 'States' is changed into 'Pradeshas' only in clause (1) of Article 1. Sir, I shall read Article 1. Clause (1) of Article I say: "India shall be a Union of States." This is the only place where Mr. Kamath has sought to change. It means instead of 'States' we shall have, "India shall be a Union of Pradeshas." In clauses (2) and (3) and in other clauses, the word 'State' will continue.

Mr. Vice-President : May I interrupt with your permission. If this amendment of Mr. Kamath is rejected, then, amendment No. 104 comes in. Even if it is carried, then, your amendment will come in subsequently and you will have a subsequent chance. I think that would economise the time of the House.

The Honourable Shri Ghanshyam Singh Gupta : Sir, the procedure that I suggest would really economise the time of the House. If I move my amendment as an amendment to Mr. Kamath's amendment, the time of the House will be saved. Otherwise a contingency may arise—I do not say it will. Suppose Mr. Kamath's amendment is carried and mine is rejected.....

Mr. Vice-President : Do you want to move it now?

The Honourable Shri Ghanshyam Singh Gupta : Yes.

Mr. Vice-President : All right; you may do so.

The Honourable Shri Ghanshyam Singh Gupta : Sir, I move:

"That in Article 1 for the word 'State' whenever it occurs, the word 'Pradesh' be substituted and consequential changes be made throughout the Draft Constitution."

The reason why I want to make this motion just now is what I have already submitted. If Mr. Kamath's amendment is carried, then it will mean that only clause (1) of Article 1 will be amended, and the rest of it will not be amended. But, if my amendment is carried, then, not only in clause (1) of Article 1 we shall have substituted the word 'Pradesh' for the word 'State', but in the subsequent portions of Article 1 and throughout the Draft Constitution, wherever the word 'State' occurs, so that it would be quite consistent. Otherwise, there would be some absurdity left. The reason why I want the word 'State' to be substituted by the word 'Pradesh' is that the word 'States'

in Parts I and II are really provinces and the States in Part III are what are called Indian States at present, none of which are States in the accepted sense of the term. One reason for using the word 'State' may be to synchronise the two, and the other reason could be to follow the American Constitution. The American Constitution has no parallel with us, because, originally the American States were all sovereign States. Our provinces are not at all sovereign; they were never sovereign of the Centre. The Indian States also are not sovereign. We want that India should not only be one nation, but it should really be one State. Therefore, I submit that it should be, "India shall be a union of Pradeshas." I avoid the word 'provinces' because, it will not fit in with what are now called Indian States, we want that both may be synchronised. This word 'Pradesha' can suit both the provinces and what are now called Indian States. Indian States are merging and merging very fast, thanks to our leaders. Moreover they themselves are choosing that word. For instance, they call the Himachal Pradesh, and Vindhya Pradesh. If we use this word for our Provinces as also for the States, all anomaly would be removed. This is all that I have to say.

Shri K. Hanumanthaiya : Sir, I have regretfully to oppose the amendments moved by my friends Mr. Kamath and Mr. Gupta. I have to state that by whatever name the rose is called, it smells sweet. Here, the Drafting Committee has advisedly called India a Union of States. My friends want to call the same by the name of a Union of Pradeshas. I do not want that this occasion should be utilised for any language controversy. I would appeal to the House not to take this question in that light. The word Pradesh, as admitted on all hands, is not an English word. We are considering the Draft in the English language. I would respectfully appeal to my honourable friends who have moved the amendments to show me in any English Dictionary the word Pradesh. We cannot go on adding to the English language unilaterally all the words that we think suitable. The English language has got its own words. We cannot make the Draft Constitution a hotch-potch of words of different languages. Besides, the Constitution, I respectfully submit, is a legal document. Words have got a fixed meaning. We cannot incorporate new words with vague meanings in this Constitution and take the risk of misinterpretation in courts of law. I would therefore beg the mover and the seconder not to press this word to be incorporated in the Draft Constitution. If my friends are very enthusiastic about the Hindi language, we are not far behind them; we will support them. But, this is not the place, this is not the occasion to insert Hindi words in the Draft Constitution. Therefore, Sir, purely as a matter of convenience and legal adaptability, the Drafting Committee' sword "State" is quite good. To substitute it by the word "Pradesh" would be to open the flood-gates of controversy, and if there are other amendments to the effect that Kannada words, Tamil words and Hindi words should be substituted in the different Articles of the Constitution then, as I said, the whole draft, as placed before the House, would be a hotch-potch of linguism. I would earnestly request the members not to press these amendments, because it is merely a translation, and not to introduce non-English words into an English Draft.

Pandit Lakshmi Kanta Maitra (West Bengal: General) : Mr. Vice-President, I have very carefully listened to the speech just delivered by my honourable friend Mr. Hanumanthaiya opposing the amendment of my honourable friend Mr. Kamath. I must tell at once my honourable friend Mr. Hanumanthaiya that he need not have unnecessarily scented a sort of underhand effort to import Hindi linguism by this amendment. In the course of my speech on the general motion for consideration of the Draft Constitution I dilated at considerable length on the question of States. I pointed out then and point out even now that the expression 'State' has got a peculiar connotation in the Constitutional literature of the world. (*Cheers*). 'State' always connotes

[Pt. Lakshmi Kanta Maitra]

an idea of sovereignty, absolute independence and things like that. In the United States of America there was a States Rights School. It seriously contended that the States had independent status and the bitterness which was generated by the long drawn out controversy culminated in the bloody civil war. That is the evidence of history. Therefore when we want to describe our country as a Union of States, I apprehend that it is quite possible that the provinces which are now being given the dignified status of States, the native States which had hitherto been under the Indian Princes, but have now either acceded to or merged in, the Indian Union may at a later stage seriously contend that they were absolutely sovereign entities and that the Native States acceded to the Indian Union ceding only three subjects, *viz.* Communications, Defence and External Affairs. In order to avoid all these likely controversies in the future, I suggested to the House that best efforts should be made to evolve a phraseology in place of 'States'. We must eliminate the chances of this controversy in the future. I am prepared even now—let my friends ransack and find out a substitute. This word has an unsavoury smell about it. In the absence of 'State' it has been suggested that the word 'Pradesh' should be substituted. Let me tell my friend Mr. Hanumanthaiya and those of his way of thinking that the word may be used in Hindi but it is a Sanskrit word. It is not an English word but there will be no difficulty if it is used. Here you describe in article 1 sub-clause (2) that—

"The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule."

If you look to Part I of the Schedule, you will find the States that are enumerated there are the Governors' provinces of Madras, Bombay, West Bengal, United Provinces, Bihar, Central Provinces, Assam and Orissa, if you look to Part II you will find Delhi, Ajmer-Merwara, including Panth Piploda and Coorg. I seriously ask, are you going to describe the City of Delhi as a State? Are you going to describe Coorg as a State? Are you going to describe Panth Piploda as a State? Are you going to describe Ajmer-Merwara as a State? If you do it, it will be simply ridiculous. Therefore in the absence of any other suitable expression I do feel that the term 'Pradesh' which is of Sanskrit origin and which means a country of big area—would be quite suitable. There will be no harm if, in the first schedule, in the description, the words 'Pradesh and territories of India' are substituted. Then it will beyond the shadow of a doubt as to what is exactly sought to be meant by 'Pradesh'. I know it is an English translation. There is some force in what my honourable friend said that in the English draft itself you should not introduce Sanskrit words. But my friend coming from Mysore should be the last person to describe his own territory as an Independent State. Does it require any argument? Has he not so far pleaded that these States should have no sovereign existence and that they should be merged with the Union? Therefore there ought to be no sanctity about the word 'State'. I am perfectly prepared if the Draftsmen or any body in this House could find an expression which would denote and connote what we want. We have always pleaded for a strong Centre. In the Draft we have a federal structure but the Drafting Committee has rightly imported to it a unitary bias. We appreciate it. If we are to give effect to that view we have got to find out an expression which will thoroughly embody the concept which we have in view. From this point of view I am convinced that nothing would be lost if we describe the States as Pradesh. In that case all categories of States, Governors' provinces, Chief Commissioners' provinces and what have hitherto been called Native States could all be included under 'Pradesh' and Pradesh could be enumerated in the First Schedule I support the amendment to substitute 'Pradesh' in place of 'State'.

Shri Rohini Kumar Chaudhari (Assam: General): Sir, in future I would ask you to allow me to speak from the nearest mike because the long distance which we have to travel from the seat to this place sometimes helps us to forget our ideas. *(Laughter)*.

I want to oppose this amendment. First of all I oppose Mr. Kamath's amendment and it is very easy to ask the House to throw it out. He has asked the word 'Pradeshas' to be used in place of the word 'States'. How does he come to the conclusion that 'Pradeshas' is a plural of 'Pradesh'? You are using the English Grammer again while you are trying to give up the English word. It should be 'Pradeshah' if anything. It cannot be 'Pradeshas'. Therefore on that ground as well as on the ground that if you change the word 'Pradesha' in article 1 and you do not touch the rest of the article, then it becomes meaningless. Therefore on these two grounds I oppose the amendment which has been moved by Mr. Kamath. But I must be careful when I go to oppose the amendment of a person like my friend Mr. Gupta who is the Speaker of the C. P. Assembly.

Nevertheless, I cannot understand the object of the change he proposes. There may be some sentiment behind it which I may understand, but not appreciate. Here, Sir, you have a Constitution in English and the same Constitution in the language called the National Language—call it Hindi or Hindustani. When you write the Constitution in Hindustani, it is but natural that you should use the word 'Pradesh' in place of the word 'State' or 'Province'. But when you are writing the Constitution in the English language, it is not conceivable why you should seek to change the word 'State' to 'Pradesh'. What is the object? That is what I would like to know. If the object is to acquaint people who are not acquainted with Hindi, with the word 'Pradesh', that I can understand. People from South India do not understand Hindi, and so first of all, let them begin by learning the word Pradesh in the Hindi Language. You start with the word Pradesh now, and next time you give them some other word to learn, and bit by bit bring the language on the people of South India. *(Laughter)*. Is that the object?

Then again, it will be most unaesthetic as suffix to the word 'Pradesh' for the United Provinces or the Central Provinces. Would you call then United Provinces Pradesh or the Central Provinces Pradesh? And if you were to translate the word Province also into Pradesh, then there would be two Pradesh Pradesh, and all this is rather odd.

Come to Bengal. What would you call West Bengal? Would you call it West Bengal Pradesh? Paschim Banga Pradesh. I can understand, but I cannot understand putting in the word Pradesh alone.

All these complications will arise if the word is changed. It will help nobody. On the other hand, it will not go against the sentiments of anyone if the word 'State' is used. So I would request Honourable Mr. Gupta to consider this point again.

If by any mischance, this amendment is carried, you, Sir, will kindly allow us time to make amendments in the first Schedule, because it looks very awkward to say U. P. Pradesh, or C. P. Pradesh. I would also like to change from Assam Pradesh to Kamrup Pradesh, because the word Assam jarson everyone's ears as I find now-a-days.

Mr. Vice-President : You must obey the bell.

Shri Rohini Kumar Chaudhari : I am short of hearing bell sounds, Sir.

Seth Govind Das (C. P. & Berar : General): First of all, Sir, I want to assure the honourable members of the non-Hindi speaking provinces, that our object in moving this amendment is not to force Hindi on any one. The language

[Seth Govind Das]

controversy need not have arisen so far as this amendment is concerned. We wanted to drop the word 'State', and therefore, this amendment is being moved.

I was rather surprised to hear the speech of my honourable friend Mr. Rohini Kumar Chaudhari. He asked us, if Pradesh is accepted, what is going to happen to U.P. and to C. P.? I want to tell him that it would be Samyukta Pradesh or Madhya Pradesh. It will not be the U.P. Pradesh or C. P. Pradesh. Mr. Rohini Kumar, I think, knows Sanskrit well, and he will agree with me that even if we adopt the word Pradesh in our Constitution, it does not mean that the English word Provinces or Province would be used alongwith the word Pradesh. If we want to get rid of the word 'State' because it has got different meanings in different countries, the only way is to put in the word Pradesh there.

Now, as far as the word Provinces is concerned, another controversy is there. There are newly formed States or Unions of States which may not accept the word Province in the beginning. Though all the provinces would be treated alike in the future, in the beginning, to name these State Unions as Provinces will not be a proper thing. Therefore, in view of these difficulties, we thought that the word 'Pradesh' would be the proper word. Even in the English version of the Constitution, I think there should not be any difficulty inputting the word Pradesh. There are many other words which have been taken in the English language, for instance words like 'bazaar' or 'Rajyas'. For these words, when we form the plural of these words, we add the letter 's', and say 'bazaars' or 'Rajyas' in English. Similarly to make a Hindi word into its plural form in the English language you need add only 's'. I do not see what difficulty there is to adding 's' to Pradesh also and say Pradeshas when we want the plural form.

I hope, Sir, that controversy of language and other questions will not be raised here, and if we think the word 'State' should be dropped, and under the present circumstances, the word 'provinces' cannot be taken up, I think the best thing would be to put in the word 'Pradesh' both in the Hindi Constitution and in the English Constitution.

Sir, I support the amendment.

The Honourable Pandit Jawaharlal Nehru (United Provinces : General): Sir, I do not wish to enter into any lengthy arguments on this question, but only wish to point out what my own reaction to this proposal is. When we met some time back in the two committees — the Union Constitution Committee and the Provincial Constitution Committee — we met jointly, and we considered this matter, and also as to what the names of the Houses should be. After considerable discussion, we came to the conclusion that one of the Houses should be called the House of States. So I say this matter was discussed then in various forms. Now I feel that at the present moment, if any change is made in the name of a province, and it is called a Pradesh, personally I think it would be a very unwise change. *(Hear, hear*). For the moment, I am not going into the merits of it. It may be, we may have to change, but if so, there should be some uniformity about these changes all over the place. It is not right to push in one or two words here and there. They do not fit in aesthetically, artistically, linguistically or in any other way.

Apart from all this, the argument that was advanced, that "State" somehow meant something which we did not wish our units to mean, I think, was not a very strong argument. The example of the United States of America was given. A State is just what you define it to be. You define in this Constitution the exact powers of your units. It does not become something less if you call it a "Pradesh" or "Province". On the other hand "Pradesh" is a word which has no definition. No one knows what it means. With all respect, no one

present in this House can define it because it has not been used in this context previously. It has been used in various other contexts. It is a very good word, and gradually it may begin to get a significance, and then of course it can be used either in the Constitution or otherwise, At the present moment, the normal use of the word varies in hundreds of different ways and the word "State" is infinitely more precise, more definite, not only for the outside world which it is, but even for us. Therefore, it will be unfortunate if we used a completely improvised word, which becomes a linguistic anachronism for a Constitution of this type. Now, I can understand the position when our constitution is fully developed and we have it in our own language with all the appropriate words. Whether "Pradesh" is the right word or not, I cannot say. That is for the experts to decide and I will accept their decision. For the moment we are not considering that issue. We are considering what words should be brought into this present English draft of the Constitution and bringing in words which will undoubtedly sound as odd and inappropriate to many ears in India is not good enough. The use of the word in a particular context is foreign. One has to get used to it, especially in regard to the context, and the more foreign words we introduce, the more you make it look odd and peculiar to the average man. My own test would be not inputting up linguistic committees and scholars, but taking a hundred odd people from the bazaar and discussing the matter with them and just seeing what their reactions are. We talk in terms of the people but in fact we function often enough as a select coterie forgetting what the people think and understand. Obviously in technical matters you cannot go to the people for technical words, but nevertheless, there is an approach that the people understand and an approach which the people are less likely to understand. Therefore, I would beg this House to consider it from this point of view and maintain the normal English word in the English Constitution and later on consider the matter as a whole as to what other words in our language you will be putting in our own draft, which will obviously have an equal status. But putting it in this would be confusing, and looking at it from a foreign point of view, it would be very confusing because no one would be used to it and it would take a long time even to understand the significance of these changes. For myself I am clear that there should be no difference in the description of what is now a province and what is now a State. There should be a uniformity of description in the two. The proposal is that the word "State" should apply to both, and the second House, if approved, should be called the House of States.

There is another matter. This touches, whether we wish it or not, several other points of controversy in this House. They may be linguistic or call it by any other word. I think it would be unfortunate if we brought in those particular controversies in this way, as if by a side door. Those have to be faced, understood and decided on their merits. There is undoubtedly an impression that changes brought about in these relatively petty ways affect the general position of those issues. I think in dealing with the Constitution, we should avoid that. The Constitution is a big enough document containing principles and deciding our political and economic make-up. As far as possible I should like to avoid those questions which, though important we could decide in the context of the drafting of the Constitution. Otherwise, what is likely to happen is that we shall spend too much time and energy from the constitutional point of view on irrelevant matters, although important, and the balance of our time and energy is spent less on really constitutional matters. Therefore, I beg the House not to accept the two amendments moved and to retain the word "State".

The Honourable Dr. B. R. Ambedkar : I oppose the amendment.

Mr. Vice-President : The question is:

"That in article 1 for the word "State" wherever it occurs, the word "Pradesh" be substituted and consequential changes be made throughout the Draft constitution."

I think the Noes have it.

Shri H. V. Kamath : I ask a division.

Mr. Vice-President : It seems to me that the "Noes" have it. It is not necessary for me to call for a division. I have the power not to grant this request. I would request honourable Members to consider the position. It seems to be quite obvious that the "Noes" have it.

The Honourable Shri Ghanshyam Singh Gupta : I accept the position that the "Noes" have it.

The Honourable Pandit Jawaharlal Nehru : May I suggest that instead of making our requests, we could raise our hands. That would give a fair indication how the matter stands.

Mr. Vice-President : Does the Honourable Shri G. S. Gupta admit that the "Noes" have it?

The Honourable Shri Ghanshyam Singh Gupta : I accept the position that the "Noes" have it.

The amendment was negatived.

The Honourable Shri Ghanshyam Singh Gupta : On a point of order, Sir, you kindly put my amendment to the House and it was lost but Mr. Kamath's motion must be put to the House formally.

Mr. Vice-President : It seems to me that Mr. Kamath's amendment is covered by yours. He wants deletion in particular parts but you wanted it everywhere.

The Honourable Shri Ghanshyam Singh Gupta : Mr. Kamath's amendment is lesser in scope than mine. If the House has not agreed to cent per cent, they might agree to five per cent.

The Honourable Pandit Jawaharlal Nehru : It will probably take less time, Mr. Vice-President, to put the amendment to the vote of the House and it is the proper procedure that it should be put to the vote of the House.

Mr. Vice-President : The question is:

"That in clause (1) of article 1, before the word 'Union' the word 'Federal' be inserted and for the word 'States' the word 'Pradeshas' be substituted."

The motion was negatived.

Shri H. V. Kamath : Sir, I beg to move:

"That in clause (1) of Article 1, for the word 'States' the word 'provinces' be substituted."

Shri B. Das: (Orissa: General): On a point of order, Sir, in view of the fact that the previous amendment has been rejected by the House this amendment would be out of order.

Mr. Vice-President : The only thing that has happened is the rejection of the word "pradesh".

Shri H. V. Kamath : My honourable friend Mr. B. Das rose to a point of order to the effect that this is not in order. The amendment that has been thrown out by the House is to the effect that the word 'Pradesh' be substituted for the word 'State', which does not rule out this amendment, *viz.,* the substitution of the word 'State' by any other word, if the House so chooses. I have therefore moved my amendment that for the word 'State' in the article and wherever it occurs throughout the Draft in this context the word 'Province' be substituted. The formal amendment is that in this particular clause the word 'State' be replaced by the word 'Province'. When I moved my first amendment with regard to the word 'Pradesh' I made my position clear as to why I am

against the retention of the word 'State'. I do not wish to repeat those arguments which I then advanced before the House. I might just recall them by saying that the word 'State' smacks of imitation as the word finds a place in the constitution of the U. S. A. Secondly the word 'State' has a bad connotation or bad odour about it, because of the association of the Indian States with the British regime which is now dead. I would therefore in all circumstances plead with this House the word 'State' should be eliminated at all costs and by all means and if the House is not in a mood to accept the word 'Pradesh' I would certainly entreat them to accept the word 'Province', as the lesser of the two evils. Our position today is that we have dispensed with or eliminated the old Indian States; and have we not already adopted the terms Himachal Pradesh and Vindhya Pradesh? We want to level them up to the position of the Indian Provinces and therefore in the new set up I feel that the word 'Province' is more happy and would express the meaning of the structure of the component units that we are going to set up in our country. Sir, I therefore moe my amendment and commend it to the acceptance of the House.

The Honourable Dr. B. R. Ambedkar : Sir, I do not accept the amendment.

(At this stage Shri Himmat Singh K. Maheshwari rose to speak.)

Mr. Vice-President : The Honourable Dr. Ambedkar has already replied to the debate and I am sorry I cannot allow any further debate on the motion.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, if after every motion is moved by a member and you ask Dr. Ambedkar whether he agrees to it and after allowing him to express his views you debar other members from speaking on the subject, it will be very hard on the House.

Mr. Vice-President : I am afraid Pandit Hirday Nath Kunzru has not realised exactly my position. I am always prepared to give every possible facility to every member here, which I need not demonstrate further than by reference to what I have done in the last few days. But just now we are pressed for time. After Mr. Kamath moved his amendment I waited for some time to see if any body would stand up and nobody stood up and when specially I found that Mr. Kamath had repeated the arguments which had been formerly stated by him, I thought that I would not be going against the wishes of the House by asking Dr. Ambedkar the question whether he wished to reply. If I failed to understand the attitude of the House I am very sorry.

Pandit Hirday Nath Kunzru : You are perfectly within your right in not allowing discussion of a clause which you regard as trivial and on which you think there has been sufficient discussion. You have the power to stop discussion and ask the Member in charge to reply. If in exercise of this power you asked Dr. Ambedkar to reply, there can be no objection to what you have done.

Mr. Vice-President : Then I will put the amendment to vote. The question is:

"That in clause (1) of Article 1, for the word 'States' the word 'Provinces' be substituted."

The motion was negatived.

Mr. Vice-President : Amendment 108, Shri Mahavir Tyagi.

Shri H. V. Kamath: Division, Sir.

Mr. Vice-President : You are a little late.

Shri Mahavir Tyagi : Sir, I am not very keen to have all the words mentioned in my amendment inserted. I do not also want to make a speech and waste the time of the House. However, I want to make one point clear and with that end in view, I shall formally move this amendment:

"That in clause (1) of article 1, for the word 'States' the words 'Republican States and the sovereignty of the Union shall reside in the whole body of the people' be substituted."

[Shri Mahavir Tyagi]

In the Draft Constitution I find that the residence of sovereignty has not been described. Where sovereignty lies has not been definitely laid down. I want that this may go on record. I shall be content if the Honourable mover of the Constitution would place before the House either in connection with the Preamble or some other Article of the Constitution, an amendment which will clearly lay down that the sovereignty shall reside in the whole body of the people. The word 'State' has one meaning in one place and another meaning elsewhere. It will therefore not be satisfactory to say that the sovereignty should rest in the States. What does the Honourable Member suggest? Whether the sovereignty reside in the Union or in the States? From the Draft it is not clear. My amendment therefore seeks to lay down definitely where sovereignty resides or shall reside in future.

I want also to make one thing clear. If we remain in the family of the United Kingdom and remain attached to them, sovereignty will probably technically remain with the King. I want to save the country from that danger. I want to make it absolutely clear that the sovereignty virtually, technically and practically resides in the whole people.....

Mr. Vice-President : May I point out that the proper place for an amendment of this nature is the Preamble?

Shri Mahavir Tyagi : It is neither defined in the Preamble in so many words. I want that it should be clearly defined. I am a layman. I would like to know from the expert draftsmen whether the Preamble forms part of the body of the Constitution. Since the Preamble is not an Article of the Constitution, may I know if it comes in the body of the Constitution proper? Can Preamble always override the law? I don't think it does. What I want is that sovereignty should be defined in one of the Articles of the Constitution. The Preamble mentions only casually that we are constituting India into a sovereign union. From this my friends of the Drafting Committee draw the conclusion that the sovereignty resides in the "people". That does not satisfy me. We cannot depend on the implication drawn. I insist that sovereignty should be defined in the body of the Constitution itself. I want that sovereignty should reside in the whole people of the country, and not in State or Union. State may only mean to be a sort of Governmental structure in the Centre, or it may include the people as well, or it may be only the union or one or more States. The provinces will also be known as States hereafter. Let us therefore define in unambiguous terms the actual residence of sovereignty for future. I may submit that in the Constitution of China it is stated that the sovereignty rests in the whole people. We may lay down the same thing in our Constitution also. I therefore beg to move this amendment.

Shri Gopikrishna Vijayavargiya (United State of Gwalior, Indore, Malwa: Madhya Bharat): Mr. Vice-President, I come from an Indian State and I have a particular interest in this amendment, and I wish the House accepts it. There are also Indian States coming in as states in this Constitution. We do not want the Rajpramukhs and others to be there permanently. Of course, as the convenants have been signed, let them be there for some time. But, in the Constitution, we should lay down that even the common people can become heads of the provinces and States, and this will be one of the methods by which we will bring the States into conformity with the provinces. This is an important question. This issue must have been engaging the attention of the States Ministry. This is therefore a very urgent affair. Even before we finish our labours at Constitution-making, we must make all attempts to see that the States do come on par with the provinces. This amendment can achieve that object. Sovereignty is a very important power and, as has been pointed out, it has been laid down in the Chinese constitution also. So there is no harm in accepting this amendment. I request the Honourable Members to vote for it.

Prof. Shibban Lal Saksena (United Provinces : General): Mr. Vice-President, Sir, the amendment moved by Mr. Tyagi is a very important amendment. I have myself given notice of a similar amendment (No. 189) which runs as follows:

"That the following new Part be inserted after Part I and the subsequent Parts and articles be renumbered accordingly: —

PART I-A

General Principles

6. The name of the Union shall be BHARAT.

7. Bharat shall be a sovereign, independent, democratic, socialist Republic.

8. All powers of government, legislative, executive and judicial, shall be derived from the people, and shall be exercisable only by or on the authority of the organs of the government established by this Constitution.

9. The National Flag of Bharat shall be the tricolour of saffron, white and green of pure hand-spun and hand-woven Khadi cloth, with the Dharmachakra of Asoka inscribed in blue in the centre in the middle stripe, the ratio between the width and breadth being 2:1.

10. Hindi written in the Devanagri script shall be the National language of Bharat:

Provided that each State in the Union shall have the right to choose its own regional language as its State language in addition to Hindi for use inside that particular State.

11. English shall be the second official language of Bharat during the transition period of the first five years of the inauguration of this Constitution.

12. The National Anthem of Bharat shall be the "Vandemataram" which is reproduced in the Second Schedule.

[Note.—The subsequent Schedules be renumbered accordingly.]

13. The Arms of Bharat consist of the Three Lions above the pedestal and the Dharmachakra, as are depicted on the top of the Asoka pillar at Sarnath.

14. The capital of Bharat is the 'City of Delhi'."

I personally think that this amendment should not be incorporated in this clause. There should be a separate Clause containing the substance of the amendment I have given notice of. In Chapter II they have defined sovereignty. In my amendment I have suggested how this should be put in. All powers of Government, legislative, executive and judicial shall be derived from the people and shall be exercisable only by or on the authority of the Government established by this Constitution. So, the sovereignty shall reside in the people and all powers of the State, legislative, executive and judicial, shall belong to the people.

Sir, my friend from the States just now pointed out that the matter is a very important one because, if we do not say here that the source and the fountain of all authority is the people, the theory that kings have got divine rights will continue. Therefore, it is important that it should be stated in the Constitution that it is the people who have sovereignty. Here in our country where the States have been a standing sore which we hope to wipe out very soon, I think this provision should find a place in the Constitution. I would request my learned friend, Dr. Ambedkar to say, when he replies to this amendment, that he accepts this principle, I hope he will find a suitable place for its insertion in the Constitution. On the Irish model, I suggest that the next chapter should contain definite provisions relating to the name of the Union, its language and other things. It may be stated therein that all power of government, legislative, executive and judicial, is derived from the people. I think this is an amendment of

[Prof. Shibban Lal Saksena]

fundamental importance and as such I hope that it will not be rejected summarily and that Dr. Ambedkar will insert it in some suitable place in the Constitution.

Maulana Hasrat Mohani (United Provinces: General): Sir, I rise to support the amendment moved by Mr. Mahavir Tyagi for the reason that it conforms to the spirit of the Objectives Resolution of this House. Our Prime Minister has repeatedly stated that the Constitution should be in conformity with the Objectives Resolution not only recently but from the very beginning. He stated—I am reading from this printed book—

"We are not changing the Objectives Resolution at all. The Objectives Resolution is history and we stand by all the principles laid down in it."

May I remind my friend, Dr. Ambedkar, that when a Committee was formed to frame the Constitution, it was expressly mentioned that they will have to conform to the Objectives Resolution. Now Dr. Ambedkar has gone out of his way. He has not conformed to the Objectives Resolution and I request all of you to see what he has done. Instead of drafting the Constitution in conformity with the Objectives Resolution, he wants to make the Objectives Resolution conform to what he is proposing now. This Draft Constitution is a bundle of inconsistencies and is worth throwing only into the wastepaper basket. He has gone his own way and therefore all his efforts are only waste of time and energy.

Mr. Vice-President : Please confine yourself to the amendment, Maulana Saheb.

Maulana Hasrat Mohani : I support this amendment because it is strictly on the lines of the Objectives Resolution. Instead of conforming to the Objectives Resolution, Dr. Ambedkar has changed the word "Republic" into a "State" and the word "independent" into "Democratic". This shows the way his mind is working. The Draft Constitution makes me sure that he wants to establish a unitary Indian Empire which will again be subject to the greater Anglo-American Empire consisting of America and its satellites, the British Commonwealth and some of the Western Powers of Europe.

Mr. Vice-President : I will ask you again to confine yourself to the amendment.

Maulana Hasrat Mohani: Sir, I support the amendment of Mr. Tyagi and I oppose the whole Constitution. May be Dr. Ambedkar produced this Draft because as Law Minister he was asked to do it. But what he has produced is a wretched thing and therefore I think that he should make amends for the mistakes he has committed. With these words I support the amendment.

Shri Prabhudayal Himatsingka (West Bengal : General): Sir, I beg to oppose the amendment. It is absurd that an attempt should be made to put words here and there. The Draft Constitution is a complete framework and where sovereignty lies, what power is given to the executive and the legislatures, etc. have been defined by the different sections in it. To make an attempt to put in words here and there will be dangerous and if we accept such amendments, I think the whole Draft Constitution may upset and we do not know where we will be landed. Of course, if there is anything to be said on principle, that may be allowed, but to make verbal alterations in the Draft which has been considered by the Committee will mean a considerable waste of time and we should not accept amendments in this fashion.

Shri M. Ananthasayanam Ayyangar : I beg to oppose the amendment. In the preamble it is stated that "We, the people of India, having solemnly resolved to constitute, etc." We are the persons who have met to give a Constitution for ourselves. Unless we are sovereign, we cannot give a Constitution

for ourselves. Hitherto it was the Parliament in the United Kingdom that framed Constitutions. The fact that we have been elected by the various legislatures and come here for framing a Constitution shows that sovereignty is inherent in the people.

Shri Mahavir Tyagi : Of course we are here as a sovereign body. But what about the future? This sovereignty has been transferred to us by the British, why do you not vest it back with the people?

Mr. Vice-President : Allow him to proceed.

Shri M. Ananthasayanam Ayyangar : I will answer Mr. Mahavir Tyagi. We have not come here on adult franchise, but we represent three hundred odd million people and are gathered here to frame a Constitution for ourselves. If we are in a position to give a constitution on behalf of the people, it follows that in future the House elected on adult franchise representing larger interests, will be even more sovereign. From this it follows that sovereignty rests with the people. Therefore I cannot find any difficulty in leaving it as it is and no such introduction as is contemplated in the amendment is necessary. I would only draw the attention of the House to the preamble in the Constitution of the United States which says:

> "We, the people of the United States, in order to form a more perfect Union, establish justice, insure domestic tranquillity....."

There are a number of articles in this Constitution. Later on the constitution was amended. The framers of the Constitution or the people of the United States who subsequently amended that constitution never said that there was a lacuna in the Constitution or that the sovereignty vested in themselves rather than with the people. Therefore, it is unnecessary. A doubt is created and to avoid that doubt an amendment is sought to be moved. There is another difficulty also. I want the sleeping dogs to lie. So far as the States are concerned, the States rulers in some places have been claiming sovereignty and we are trying to liquidate these rulers. Many of them have been liquidated, and these rulers have come into these States. In part III of the 1st Schedule the States are there with the rulers in some form or other. The people are already beginning to assert themselves and the whole thing will disappear even on that ground. I do not want the clause to be inserted here as the amendment contemplates. It is enough to leave the Preamble to itself and to work itself. We are sovereign and in that capacity we have gathered here and we shall give unto ourselves a Constitution. It is unnecessary to create a ghost and then afterwards lay it. I oppose this amendment, Sir.

Shri Lokanath Misra (Orissa: General): Mr. Vice-President, Sir, one of the honourable members of this House has opposed this amendment on the ground that by the acceptance of this amendment, the whole structure and the whole scheme of the Draft Constitution will be changed. It seems to me that this is a bold statement and I will not like to digest a statement like this. The structure of the Constitution will be changed as if we are committed not to change it or we will abide by anything that will not change it. It seems to me therefore to be a dangerous statement to say that we will not accept because the structure of the scheme of the Draft Constitution will be changed. We are here to change it, if need be. Indirectly, it means also that the very basis, the scheme, or the structure of the Constitution is such that it militates against the very principle that underlies this amendment. If that is so, it is still more dangerous because this amendment clearly says—and no more than that—the sovereignty of India rests in the whole body of the people of India.

Now, one of my friends has just said that it does really vest with the people of India and therefore it will not be necessary. I submit it is a sort of a hypocritical statement, because I remember to have heard Dr. Ambedkar, while he was speaking somewhere that this sovereignty rests with the Government of

[Shri Lokanath Misra]

India and I want to make a difference between the Government of India and the people of India; they may be identical, they may be different. It might be that the Government of India will be supposed to be one thing and the people of India might be supposed to be another thing. They were so one day. Therefore, we must make it clear where, after our freedom, sovereignty vests.—In the people of India? In the Cabinet? In the Government? In the President or somewhere else? I therefore think that to avoid this snag once and for all, we ought to declare that the sovereignty vests in each one of the citizens of India and for that purpose at least this amendment is very appropriate. I do not want to insist that this amendment should be passed and put in here, but it must be clear that there need be no reservation in the minds of us that sovereignty does not lie in each one of the citizens of India. I therefore support the spirit of this amendment and reiterate that really India's sovereignty vests in each one of her citizens, however high or low, pandit or no pandit, fool or wise; it belongs to the people, each one of them, once and for all.

Mr. Vice-President : I shall now put this amendment to vote.

Shri Mahavir Tyagi : Mr. Vice-President, Sir, in view of what the learned draftsman has said, namely that the sovereignty remains vested, in spite of this draft, in the people, I do not wish to press my amendment. I hope, Sir, Dr. Ambedkar agrees that his draft means that it vests with the people, and his explanation may well go down into the records for future reference.

The Honourable Dr. B. R. Ambedkar : Beyond doubt it vests with the people. I might also tell my friend that I shall not have the least objection if this matter was raised again when we are discussing the Preamble.

Shri Mahavir Tyagi : Then I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of Article 1, after the word 'States' the words 'equal *inter se*' be added."

In commending this amendment to the House, I would like to express my gratitude to the Chairman of the Drafting Committee for giving us a new version of what the Constitution is intended to be. It was somewhat new, to me at least, to hear that a Constitution is a mechanism for regulating the various organs of Government and their functions; and that any desire to include in it any aspiration of the people might be regarded as somewhat out of place. I am grateful for this view of the matter, as in future I shall conduct myself in my amendments and in my speeches accordingly. I must, however, add that when reference is made to the chapter on the Directives I can assure Dr. Ambedkar that I too have read them, though perhaps not with as much frequency and intensity with which he may have read it. The 'Directives' are, in my opinion, the vaguest, loosest, thickest smoke-screen that could be drawn against the eyes of the people, and may be used to make them believe what the draftsmen never intended or meant perhaps. When those matters are brought before the tribunals for adjudication or arbitration, they might not be interpreted in the sense the people might believe those clauses to convey.

In proposing this particular amendment, Sir, I have no illusion about the actual state of affairs. In the States, today, including both—what are called the Provinces and which have still to be called the States proper,—I realise there is no equality, of population or possibilities, area or resources.

But I also recognise that even if equality of political status does not exist today, we have, at any rate, to strive towards a state of affairs in which they

would really and truly be equal amongst themselves, as members of a Common Federation. If this Union is to be a true federation, as we are assured it is going to be, if this Union is going to be a democratic federation, as we have also been promised again and again, then, I suggest that it is of the utmost importance that the constituent parts of the Union should be and must be equal amongst themselves.

This equality, I may assure the House, does not exist, and need not consist in area or population, in revenue or resources, in industrial or educational development. Unfortunately, we are all aware that the various parts of this country, politically divided or geographically demarcated, are not all equally developed and advanced. It must be the first task of the Union to see that those who have, for no fault of theirs, lagged behind, shall not continue to remain backward, and those who have had, for some Adventitious reasons, some advantage over others and moved forward more than others, shall also not be so selfish as to insist upon retaining their position and keeping those who are backward still lagging behind. The country cannot progress, the ideals we have all in view regarding the future growth and prosperity of this country will not be realised, if any single part of it is not able to pull its full weight in the advance of the country. That is one reason why I suggest that we must, here and now, insert in the Constitution our desire, at any rate, that in this Union when the Constitution is properly framed and working, the units shall be regarded as politically equal amongst themselves. I mean equal politically, in the sense that if one unit, however large it may be has the power of taxation of a certain kind, other units, however small, shall also have that power; if one unit has the right to maintain and use its own police force, the others also would have it; if one unit has the right to maintain its exclusive army, then another unit also shall have it. This being my conception of equality of States *inter se*, the existing differentiation between those which have been called provinces and between those which have been called States, those States which have merged and those who have been acceded will have to be abolished at the earliest opportunity, even though today it may be an unfortunate fact of our position.

This is not the only reason which actuates me inputting forward this suggestion before the House. I look forward to the day when this Union of India shall consist of a body of Village Panchayats, knit together amongst themselves as co-operative republics, which will combine together not only for the greater advancement of their own inherent resources, but also for the greater prosperity of the country as a whole. In this view of the destiny of this Union, in this view of the position and potentiality of each component part of the Union, I think it would be the greatest hindrance if any one is politically considered, or socially regarded as unequal to others. If it is thought that some only should have the leadership while the others have the destiny of always being followers, it would be, I repeat, an untold disaster to the country. Just as we are resolved and are all agreed that we shall have amongst ourselves, as citizens or individuals, equality before the law, just as we have thought that all distinctions of caste and creed shall disappear from the face of this land, so also, I submit, that this country must consist, as soon as we can manage it, of equal units, equal parts of the federation, each anxious, each competent, each equipped with the utmost possible means for development of the resources and the possibilities inherent in it; each also intent upon and each also willing to co-operate in the strengthening and development of the entire country, to the best of its possibilities. We have many parts in this country which are admittedly very backward in all kinds of material or moral development. It is towards them, it is for them, that I feel it necessary to insist that if they are non-equal *inter set* today, they shall be made equal at the earliest opportunity.

[Prof. K. T. Shah]

For this reason, the motion that was made just before, regarding the republican character of every component part of the Union, meets with my highest and heartiest approval. All these remnants, all these absurdities of economies, and all these anachronisms of history which are embodied in the so-called Ruling Princes, must disappear. It is only when we have got rid of these autocrats and plutocrats that we shall be able to design a humane and reasonable Constitution and try to attain the aims of life, which our great Teachers have placed before us.

It is for the same reason also that I have, in another part of this Constitution, tabled an amendment to that effect. I hope, Sir, that hereafter, at any rate, the Union of India shall consist of villages or groups of villages, which are each in themselves autonomous units, which are each in themselves republics, and each, if necessary, with the right to co-operate with their neighbours, so that as a result of their combined and collective effort, the Indian people just emerging from political bondage and economic slavery, may soon attain their rightful place in the role of the nations, and make their effective contribution to the progress of mankind.

I commend my amendment to the House.

Shri H. V. Kamath: Mr. Vice-President Sir, I rise to support the amendment moved by my friend Professor Shah. In view of the fact that the House has not accepted the qualifying word 'federal' for the word Union, I think it is necessary for us to define the status of the States. As my friend remarked, the provinces or States or Chief Commissioners' provinces certainly are not equal amongst themselves. Therefore, for the sake of clarity, for the sake of accuracy, for the sake of precision in constitutional terminology, it is essential for us to define the relationship or status of the States as between themselves. Therefore, the amendment of my friend Professor Shah is very apposite in my estimation. In a Constitution of this sort, which is essentially, as the footnote on page 2 says, federal in structure, there should not be one State superior to another, or one State inferior to another. There should not be any one State which may be called *primus inter pares,* that is first among equals. We should avoid this in the future constitutional set up. Obviously, it is necessary for us to define that all the States as amongst themselves should be equal. All the States should have only an equal status amongst themselves. If at all there is a superior State or Government or a mechanism, it is the mechanism of the Union Government. That is, if I may say so, it may be a super State or a supra State so far as India is concerned. So far as the States themselves are concerned, they should be absolutely equal amongst themselves. I therefore support the amendment of my friend Professor Shah to the effect that India shall be a Union of States which are equal *inter se.*

Shri M. Ananthasayanam Ayyangar : Sir, I am not able to follow either the mover or Mr. Kamath who supported him. If we accept the amendment, it means that India shall be a Union of States equal *inter se*. What is this equality? Is it in extent or area or population or economic resources? In what are they to be equal?

An Honourable Member : States.

Shri M. Ananthasayanam Ayyangar : What are the States? So far as representation is concerned, most of the States in part I of the First Schedule are equal; there is no difference made between the one and the other. So far as the States in Part III of the First Schedule are concerned, they have come in by certain agreements. We have accepted the agreements and until we are able to revoke the agreements or introduce different sets of agreements, we cannot make them equal. Even amongst ourselves, in all the Provinces or States which are included in Part I of the First Schedule, there cannot be an equality of the kind

envisaged. This is absolutely an indefinite amendment. So far as the States are concerned, according to the population they have representation both in the Lower and Upper Houses. Therefore this amendment is understandable, vague and impractical and ought not to be accepted.

The Honourable Dr. B. R. Ambedkar : Sir, I oppose the amendment.

Mr. Vice-President : I put the amendment to vote.

The amendment was negatived.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That at the end of clause (1) of Article 1, the following be inserted:

'and shall be known as the United States of India'."

Sir, this is a non-controversial amendment. It gives a bigger, a more dignified and a more sonourous name to the Union. If any precendent is needed we have it in the "United States of America". I submit that in order to keep the balance between the Western hemisphere and Eastern hemisphere we should adopt this expression in India. India is the leading country in the East and we should have a very dignified name. As I have submitted it is a non-controversial amendment, and I ask the House to consider it on the merits.

The other amendment is an alternative to this. I move:

"That at the end of clause (1) of Article 1, the following be inserted:

'and shall be known as the Union of India'."

My other amendment is this. I move :

"That at the end of clause (1) of Article 1, the following be inserted:

'and shall be known as the Indian Union'."

Sir, I submit these are three alternatives. I would prefer the first but it all depends on the House as to what it thinks about them.

Shri H. V. Kamath : Sir, I rise to oppose the amendment Nos. 110 and 112. As regards amendment 110 the very argument that my friend advanced that we have a precedent in the United States, is itself an argument against accepting it, in my judgment. He said something to the effect that there should be a meeting of East and West or some words to that effect. I certainly stand for harmony, a synthesis of the East and West, but I certainly do not want any hybrid development. The amendment which my Honourable friend has moved before the House seeks to bring about such a hybrid development between the East and West and we do not want to be suspected at this stage when we are pursuing or supposed to be pursuing a neutral foreign policy. We do not want the faintest indication to be made here in this House that we are going to copy either the U.S.S.R. or U.S.A. As regards U.S.S.R., there is no effect or influence in this constitution and as regards U.S.A., precisely because this will smack of copying the U.S.A. Constitution, I oppose this amendment which seeks to add "shall be known as the United States of India".

As regards No. 111. I support the amendment and we will thereby be eliminating or removing that hateful word 'State'. Just now the House was pleased to throw out that amendment and I do not want the 'State' to come in by the back-door again in describing the structure of the Indian Union and therefore I would support my Honourable friend Mr. Naziruddin Ahmad in referring to India as the Union of India.

[Shri H. V. Kamath]

As regards No. 112, once we accept the words 'Union of India' there is no need to consider the third amendment. I think from the point of view of language, sound and its reaction on the ears, the Union of India is a much more dignified expression than Indian Union. I therefore oppose 110 and 112 and support 111.

The Honourable Dr. B. R. Ambedkar : Sir, I oppose all these amendments. With regard to the first amendment that India should be known as the United States of India, the argument set out by my friend Mr. Kamath is a perfectly valid argument and I accept it wholeheartedly. I have given my own views as to why I used the word 'Union' and did not use the word 'Federation'.

With regard to the other amendment that India should be known as the Union of India, I also say that this is unnecessary, because we have all along meant that this country should be known as India. without giving any indication as to what are the relations of the component parts of the Indian Union in the very title of the name of the country. India has been known as India throughout history and throughout all these past years. As a member of the U.N.O. the name of the country is India and all agreements are signed as such and personally I think the name of the country should not in any sense give any indication as to what are the subordinate divisions it is composed of. I therefore oppose the amendments and maintain that the Draft as it is presented to the House is the best so far as these amendments are concerned.

Mr. Vice-President : I shall now put the amendments one by one to the vote.

Mr. Naziruddin Ahmad: Sir, I beg to leave to withdraw the amendments. The amendments were, by leave of the Assembly, withdrawn.

Mr. Vice-President : Amendment No. 113.

Mr. Naziruddin Ahmad : I am not moving 113.

But I am moving 114. Sir, I beg to move :

"That in clause (2) of Article 1, the word 'The' occurring at the beginning be deleted."

Sir, this part really tries to define the words "The States". I submit that the word 'The' is a definite article and not a part of the name or nomenclature. Though the word has been used in this context, the word has been used also in other combinations like 'A State', 'Any State', 'Every State' and all sorts of States.

The Honourable Dr. B.R. Ambedkar : Sir, I raise a point of order. My point of order is that this is not an amendment. Unless it changes the substance of the original proposition, it is not an amendment. I am trying to find out the reference in May's Parliamentary Practice. But I would like to raise this point at this moment. If my friend will forgive me, I think he is in the habit of moving all sorts of amendments, asking for a comma here, no commas there and so on and I think we must put a stop to this sort of thing in the very beginning.

Mr. Naziruddin Ahmad : On the very threshold of independence, if I am to be stopped like this, I shall bow down and submit to the decision of the Chair.

Mr. Vice-President : What is your reply to the point of order?

Mr. Naziruddin Ahmad : My reply to the point or order raised is this. I want to remove the word "The" from the article and therefore it is an amendment. This is certainly a drafting amendment. It may be opposed on the

ground that it is insignificant, illogical or purposeless or useless and so forth. But Dr. Ambedkar is not right in asserting that it is not an amendment at all. It cannot be ruled out on the technical ground that it is not an amendment.

And with regard to my Honourable friend's remarks as to my habit of moving amendments like punctuations and other changes, I am happy to inform him and the House that I have ceased to follow that habit so far as this amendment is concerned. *(Laughter).*

Mr. Vice-President : You say it is a drafting amendment. Can't we leave it to the Drafting Committee and its Chairman for seeing to it at the third reading? I am sure they will accept these amendments if there is any substance in them.

Mr. Naziruddin Ahmad : In that case, it would be leaving the matter to the Drafting Committee, instead of leaving it to the judgment of the House. The spokesman of the Drafting Committee has already given out his mind. Therefore, if I were to agree to leave it to the Drafting Committee, it would be as good as withdrawing it. Therefore, I have to submit, again, that the word "The" is not part of the name.

Mr. Vice-President : I am waiting to hear Dr. Ambedkar on this point.

The Honourable Dr. B. R. Ambedkar : Sir, I do not know why the Honourable Members objects to the word 'the'. 'The' is a definite article, and it is quite necessary, because we are referring to the States in the Schedule. We are not referring to States in general, but to certain specific States which are mentioned in the Schedule. Therefore the definite article 'the' is necessary. It refers to the definite States included in the Schedule.

Secondly, I would like to submit this, it would be wrong—and I speak about myself—for any Indian to presume such precise command over the English language as to insist in a dogmatic manner that a comma is necessary here, a semi-colon is necessary there, or article 'a' is proper here and article 'the' would be proper there and so on. But if my friend chooses to arrogate to himself the authority of a perfect grammarian so far as English is concerned, I would like to draw his attention to the Australian Constitution from which we have borrowed these words and the definite article 'the' is used there. So I take shelter or refuge under the Australian Constitution which, I suppose, we may take it, was drafted by men who were good draftsmen and who knew the English language and whom we cannot hold guilty of having committed an error in the language.

Mr. Vice-President : I put the amendment to vote.

The amendment was negatived.

Mr. Vice-President : Amendment No. 119, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in sub-clause (c) of clause (3) of Article 1, after words 'as may' the word 'hereafter' be inserted."

Sir, I have moved this amendment after, I believe, taking great risks of having to displease the Honourable Chairman of the Drafting Committee. But I have to submit most respectfully that things which occur to Members should be placed before the House and the opinion of the House should be taken. If I have offended any Member by moving.

Mr. Vice-President : There is no question of offending any one.

Mr. Naziruddin Ahmad : Sir, I beg to submit that the context indicates the word "hereafter" that is, States which may hereafter be acquired. So the word 'hereafter' would be appropriate and I beg the House to consider insertion of this word.

The Honourable Dr. B. R. Ambedkar : I say it is quite unnecessary, and I oppose it.

Mr. Vice-President : I put the amendment to vote.

The amendment was negatived.

Mr. Vice-President : Tomorrow, I understand, is a bank holiday. So we postpone further consideration of this to Wednesday 10 O'clock. We start from amendment No. 126.

The House then adjourned till Ten of the Clock, on Wednesday, the 17th November, 1948.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 17*th November,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the pledge and signed the Register :

1. Shri B. H. Khardekar (Kolhapur State).
2. Shri A. Thanu Pillai (Travancore State).

DRAFT CONSTITUTION—*contd.*

ARTICLE 1—*contd.*

Mr. Vice-President : (Dr. H. C. Mookherjee): We shall now go on with the amendments. Amendment No. 126 — Prof. Shah.

Prof. K. T. Shah (Bihar : General): Mr. Vice-President, Sir, I beg to move:

"That at the end of sub-clause (c) of clause (3) of article 1, the following be added:

or as may agree to join or accede to or merge with the Union'."

The clause, as amended, will read:

"such other territories as may be acquired or as may agree to join or accede to or merge with the Union."

I think this is a very simple amendment. It tries to include within the territories of the Union not only those which are at present in it, or which, under the provisions of this Article, come under its scope; but also those which after the Constitution is passed may agree to join, or accede to, or merge with, the Union. I confess that I am not very enamoured of the term 'acquired'. I do not suggest that acquisition is necessarily by conquest. I agree that acquisition may take place by other means than conquest. I have, therefore, not suggested any alteration of the word "acquired".

At the same time, however, I feel that the term is not sufficiently inclusive. It does not take account, for instance, of the addition to the territory by voluntary agreement, or by accession of States, which, at the time the Constitution is passed, had not yet acceded and or were not merged with the Union. I have in mind two particular instances which have led me to table this amendment. There are neighbouring territories even today which are independent States, with which, however, we have much affinity. They may find in a closer union with us much greater chance of their own advancement or prosperity; and as such it is possible that they also may like to join this Union, and take all the benefits that joining with such a great State, with such resources as we have, may bring to them as well. There is in this suggestion no intention of coercion or conquest by any use of force, or aggressive designs upon any neighbouring territory, in an amendment of this kind. This is only a provision that, without any necessity to amend the Constitution, if some such contingency arose, we could simply under the existing provisions accept the joining or accession of such States as today are independent, sovereign States in their own name, in their own right; and which may yet feel the necessity of much closer union than any treaty or alliance may provide.

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I trust, therefore, that this provision which is only permissive and facilitating the joining of other States, will find no objection in any part of this House.

Then there is the accession of States, which, at the time I put in this amendment, had not acceded to the Union. Everybody would understand the example I have in mind. Even now I am not clear whether that particular State has, in point of technical, constitutional law, actually acceded to the Union even today. Whatever that may be, here is a provision that the territories of the Union will include also such a State if and when it accedes.

The third contingency is of merger. This contingency of States completely identifying themselves to the point of sacrificing their own identity and becoming part and parcel, integral units, of this Union should I suggest also be provided for so that in the long run the Union should consist of parts which I hope would be equal *inter se*, making the components of the Union.

These three contingencies I have sought to provide for by this amendment, *viz*. States joining voluntarily, States acceding—which have not yet acceded, and States becoming merged in the Union, may arise at any time; and so I do not think this amendment will in any way be objectionable in any part of the House. The merger problem is ticklish, rather delicate, and we do not yet know what final shape this great development will take. But whatever that shape may be, the integrity of the Union, the integral association, if I may put it that way, of States which are still retaining somehow their separate identity, will help to make this Union territory much more uniform under single jurisdiction and the parts thereof much more equal *inter se* than is the case today. On these grounds, therefore, Sir, I think this amendment ought to commend itself to the House.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I oppose the amendment.

Mr. Vice-President : The question is:

That at the end of sub-clause (c) of clause (3) of article 1, the following be added:—

"or as may agree to join or accede to or merge with the Union."

The motion was negatived.

Mr. Vice-President : As regards the next amendment, No. 127, standing in the name of Sardar Hukam Singh, I do not think it arises out of Article 1. It may be discussed at the proper time and place.

I think the same objection applies also to amendment No. 128, standing in the names of Shri B. A. Mandloi and Thakur Chhedi Lal. It can be discussed hereafter.

Now we come to amendment No. 129. Professor K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, this amendment which stands in my name is as follows:

"That the following proviso be added to article 1:

'Provided that within a period not exceeding ten years of the date when this constitution comes into operation, the distinction or difference embodied in the several Schedules to this Constitution and in the various articles that follow shall be abolished, and the member States of the Union of India shall be organised on a uniform basis of groups of village Panchayats co-operatively organised *inter se*, and functioning as democratic 'units within the Union'."

This also is part of the general idea I am trying to propagate. It tries to realise the ideals which I hope will commend themselves to the House, namely that, in the long run, this Union must consist of locally autonomous units, equal *inter se*, which will be the strength as well as the salvation of this country in my opinion.

Sir, it appears to me that in the various Schedules as well as in the various articles that follow, there is an obvious distinction between not only the old-time Provinces as they were called, but the old-time States whose designation is now sought to be applied to all the Members of the Union which are amongst themselves clearly not on an equal footing.

Now, there may be reasons why at the present time it is not possible to make them all, with one stroke of the pen so to say, equal by themselves and amongst themselves. I recognise the difficulty. I notice, however, that even in the Constitution, and in the reports of the Experts Committee and others, the intention obviously is to see that even though at the present time there may be these difficulties, within a given period—I have given here the period of ten years—within a given period these differences, should disappear, and the country reorganised on a uniform basis. These differences, at the present time, hinder not only the uniformity of jurisdiction of authority and of working but I suggest it will also impede the developing of the country for lack of this very uniformity. Whatever, therefore, may be the heritage of the past, and whatever may be the restricting, conditioning factor of today which compels us to recognise these inequalities between the member States, I suggest that we must make up our mind, and this Constitution should provide that these differences, these inequalities, these variations, must disappear, and that too within a pre-determined, within a given period of ten years.

The ten-year period suggested is sufficiently long not to cause any difficulty in smoothing away the present differences. The ten year period would be sufficient to readjust the tax systems, the ten year period would be sufficient to readjust if necessary the judicial systems, the legal and fiscal systems, the ten year period would be sufficient to readjust all differences in communications, transport, and other common factors which at the present time do cause a great deal of variation, and, in my opinion, a great deal of hardship, impediment and heart-burning as between the various units. To give you but one instance, it has been recently held by many people that the existence of the States as independent jurisdictions leads to considerable evasion of taxation; or, what is worse, that it leads to an artificial attraction of industry from one area into another, where the taxes are believed to be lower or where other facilities for the growth of industry are easier or greater. These arise not from the inherent qualities, resources, or peculiarities of those regions; these arise not from the natural differences that cannot be abolished by human effort; they arise simply and solely because there are varying jurisdictions, which permit all these differentiations to go on accumulating.

As I have already suggested, their presence is bound to work against the best long range interests of the country, which seeks to march forward, which seeks to make a uniform plan for all-round development within a given period. And therefore it is but right and proper that we should try and eliminate these traditional differences, so that within the stated period we should attain the goal that we have in view.

I have already stated that these differences are of human creation. They are legacies of the past. But as these are impediments in the way, they must be removed at the earliest opportunity. The period of ten years is long enough for making constructive efforts to readjust and make more or less uniform the various units that compose the country as between themselves.

In trying to reconstruct and readjust these various units, I have further suggested that they should be re-organised. The moment we have an opportunity to do so, we must re-organise them into autonomous village groups, which would have more natural geographical affinity amongst themselves and

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more economic sympathy amongst themselves than happens to be the case in the *ad hoc* creations which we call either provinces or States.

We have in this regard a burning problem already causing considerable amount of difficulty in the reconstruction of the units or provinces on what is called linguistic basis. The constitution of the provinces on a linguistic basis is not by itself a guarantee that the intrinsic unity of each region or group will be properly developed; and, what is more, that the principle of democratic self-government of the *people*, by the *people*, for the *people*, would be equally promoted, if these various units are reconstructed on any other basis but that of local unity, local affinity, and local identity of interest. It is for that reason that I am suggesting the re-grouping, the reconstruction and the re-adjustment on a village basis.

The constitution of the villages on a co-operative basis, enabling them to make common cause, make of them a sort of internal republics so to say,—*imperium in imperio,* if I may use the expression,—would be the best guarantee for the development that we have in view. They would be able to take note of the local resources, the local talent, and the local possibilities much better than any distant Government, like the one at the Centre or even at the provincial headquarters even of the size that many of them in our country are.

Sir, remarkable is the emphasis that our great leaders have laid upon the re-vitalisation of the villages. As such I think I am following very honoured foot-steps, if I put forward this ideal before you, and invite you to consider the possibility of re-developing the State in the only manner in which in my opinion it can be assuredly developed, *e.g.,* on the basis of co-operative village reorganisation, forming groups sufficiently strong and big to enable them to progress among themselves, and realise the ideal of a better standard of living that we have been hoping and striving for all these years. I commend this proposition to the House.

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I agree with the suggestion that, early or late, we must re-organise this country on a system of village panchayats. But today there are not such panchayats. That being so, if today we are told that within a period of ten years, to be provided for in the Constitution itself, all distinction should be abolished, it would not be a practical proposition. Myself and Professor Ranga have given notice of an amendment to the Directive Principles to the effect that the State shall take care to see that village panchayats are re-organised and re-established every-where, so that, as far as possible, in the interests of democracy, the villages may be trained in the art of self-government, even autonomy. In that way there may be development of villages. But, in the substantive portion of the Constitution itself, to say that the distinction between State and State should be abolished and the whole country re-organised on the village autonomy basis, is a different thing. We cannot do this immediately. The villages are unfortunately torn by factions and there is nothing like responsibility there now. Under the circumstances I do not want to say anything more than what Dr. Ambedkar has said. He is a bit too pessimistic; I do not agree that we can never reform the villages and develop them for self-government. We must be able to reform the villages and introduce democratic principles of government there. It will all take time. Therefore, now to say that all the existing differences should be abolished at once, is too much to accept. We also expect that, with the indefatigable energy shown by Sardar Patel, the distinction between the States and Provinces will automatically disappear. But let us not rush matters too much. The differences are disappearing fast and popular Governments are coming into existence everywhere. At this rate I am sure that before ten years elapse there will be no difference between either

Prof. K. T. Shah or any one sitting on the other benches as regards the ultimate goal that we should reach.

The only question is about the method and pace with which this object should be achieved. I would appeal to him not to press the amendment. We are all engaged on the common task of attaining the absolute sovereignty of the people including those in States. We must devise different methods to suit local needs and conditions. This country will ultimately consist of a number of village republics, autonomous as far as possible, knitted into a number of States with a Union at the Centre. We do derive all authority from the people who must be trained in the art of government and the responsibility must flow from them. But this amendment is premature. I therefore request Professor Shah not to press his amendment. If he does not do so, I am sorry I shall be obliged to oppose it.

Prof. Shibban Lal Saksena (United Provinces : General): Sir, in this amendment, Professor Shah has enunciated two important principles: one is that after ten years he expects the Government of India to attain a particular shape and hopes that it shall be organised on the basis of groups of village panchayats, organised *inter se,* and functioning subordinately to the Union. Sir, with these two principles I think most Members will agree. I have myself given notice of certain amendments wherein I have stated that after ten years, many of the principles embodied in the Constitution would be in operation and would have the force of law. Similarly, also we have provided elsewhere in our amendment that the present system of village administration should be organised on the basis of village panchayats. It was pointed out to the House the other day that we want the Republic of India to be based on small village republics having autonomy. But I do feel that the law as it stands here is vague and should be amplified. Therefore I suggest that instead of putting this in this omnibus form, Mr. Shah should bring in amendments to the various clauses where these should be inserted. I personally agree with the two principles, firstly, that the distinction embodied in the several schedules should be abolished, and secondly, that village panchayats should find a place in the Constitution and that everywhere a uniform method of forming village panchayats should be adopted. In fact in the Gandhian Constitution which is proposed by Professor Aggarwal, he points out that Mahatma Gandhi wanted that there should be village republics. He envisaged that for about every 20,000 people there should be a panchayat and these units should elect the Taluk panchayats and the district panchayats. I agree that these panchayats should find a place in the Constitution and should also have some voice in the election of the Upper House, but I think in this place it is not proper to say that the distinction embodied in the schedules should be abolished. That, I think is going too far, apart from its being very vague. Instead of this, I would suggest that Mr. Shah should table amendments to the various schedules when they are taken up. I hope Mr. Shah will not press his amendment.

Maulana Hasrat Mohani (United Provinces : Muslim): Sir, I beg wholeheartedly to support the amendment proposed by Professor Shah where he says that the member States of the Union of India shall be organised on a uniform basis of groups of village panchayats co-operatively organised. I would like to go a step further and say that instead of making the village panchayat a unit, we should make a village Soviet as the unit of our Constitution. It will not be out of place to point out to you that I approached Mahatma Gandhi and presented to him the Soviet Constitution and discussed with him all the points contained in that Constitution. He agreed that at least accepted two principles of that Soviet Constitution. One of those two principles was, "No work, no vote". The second thing was that our unit must be a village Soviet and he said that the Constitution of the Soviet was quite similar to the Constitution of

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the All-India Congress Committee here, as we have got village Congress Committees which elect representatives to the Tehsil Congress Committees; the Tehsil Congress Committees elect their representatives to the District Congress Committees, the District Congress Committees to the Provincial Congress Committees and the Provincial Congress Committees to the All-India Congress Committee. The same process has been adopted by the Soviet Constitution. Every village there is a self-sufficient Village Soviet. It sends its representatives to the higher Soviets. If we give up this idea of the village panchayats and accept the village Soviet as our unit, all these absurdities which exist in the Constitution by way of provision for minorities, etc. will disappear. With this suggestion, I wholeheartedly approve and support the amendment proposed by Professor Shah.

The Honourable Dr. B. R. Ambedkar : I oppose the amendment.

Mr. Vice-President : I will now put the amendment to the vote. The question is :

That the following proviso be added to article 1 :—

"Provided that within a period not exceeding ten years of the date when this constitution comes into operation, the distinction or difference embodied in the several Schedules to this Constitution, and in the various articles that follow shall be abolished, and the member States of the Union of India shall be organised on a uniform basis of groups of village Panchayats co-operatively organised *inter se*, and functioning as democratic units within the Union."

The amendment was negatived.

Mr. Vice-President : The next one is number 130. Mr. Mandloi.

Shri B. A. Mandloi (C. P. & Berar : General): Sir, I am not moving it.

Mr. Vice-President : Let us now go back to the amendments which we did not take into consideration on Monday. No. 83.

Shri M. Ananthasayanam Ayyangar : I suggest that these may be allowed to be held over and that article 1 may be put to the vote now.

Mr. Vice-President : Please allow me to proceed. No. 83 deals with script and language. This may be discussed at the proper time when we discuss the question of language and script under article 99. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

"That at the beginning of the heading above article 1, the word and Roman figure 'CHAPTER I', be inserted."

Sir, I submit this raises an important question of drafting. Honourable Members will find that in the Draft Constitution chapter numbers are not continuous. There are many places where there is no chapter number but there are some cases where are several chapters and they are numbered separately. The result of this is some amount of confusion. If we number the chapters consecutively apart from the Parts to which they appertain, the advantage will be that, if we refer to a particular chapter, it will be enough indication of the chapter belonging to that particular Part. If we however retain the existing numbering, the result would be that we have to say Chapter I of Part III, Chapter III of Part IV, etc. I submit, Sir, it would be more advantageous to adopt running chapter numbers in the Draft Constitution. That would be highly advantageous from a practical point of view. Sir, I have before me many samples of Indian enactments. The practice in India has been uniform in this respect, though I must point out so far as the existing Government of India Act is concerned, the present draft follows the practice in England. There is in that Act no contiguous running chapter numbers as in Indian practice.

Coming, Sir, to the various enactments, with which everybody is familiar, namely, the Civil Procedure Code, the Criminal Procedure Code, the Evidence Act and all other Acts, Members will find that these Acts are divided into several parts. The chapter numbers are not individually and separately numbered and although there are several parts, the chapter numbers are continuous. The result is an enormous simplification in the matter of citation. In the Criminal Procedure Code and in the Penal Code and in other Acts, we refer to certain chapter number without reference to the parts to which they belong. I submit this is the universal practice in India. There are many other Acts which are divided into Parts but the chapters bear running numbers. Considered, therefore, from the point of view of established practice in India and the point of convenience in the matter of citation, I think the chapters, irrespective of the Parts to which they belong, should bear consecutive numbers. This is a matter of convenience and I thought it my duty to place my views before this House. With these few words I commend my amendment to the acceptance of the House.

The Honourable Dr. B. R. Ambedkar : Sir, I oppose the amendment.

Mr. Vice-President : The question is:

"That at the beginning of the heading above article 1, the word and Roman figure 'Chapter I', be inserted."

The motion was negatived.

Mr. Vice-President : I find that so far as item No. 85 is concerned the first part of it may be moved as the other portion has been disposed of already. I therefore call upon Mr. Lokanath Misra to move the first part.

The Honourable Pandit Govind Ballabh Pant (United Provinces : General): Sir, I move that we now pass on the Article 2 and postpone discussion on the remaining amendments to Article 1. So far we have not been able to reach unanimity on this important point. I am not without hope that if the discussion is postponed, it may be possible to find some solution that may be acceptable to all. So, nothing will be lost. After all we have to take the decision, today, tomorrow or the day after: nobody will suffer thereby, but if we can find something that satisfies everybody, I think the House will feel all the stronger for facing the tasks that lie ahead of it. I hope there will be no difference of opinion on this point and I do not see why there should be any opposition from any quarter. After all, we will take the decision. Nobody else is going to add to or diminish the strength of any section or of any group here, and we are not here as sections or groups. Everyone of us is here to make the best contribution towards the solution of these most intricate, complicated and difficult problems and if we handle them with a little patience, I hope we will be able to settle them more satisfactorily than we would otherwise. So, I suggest that the discussion on the rest of the amendments to Article 1 be postponed.

Shri H. V. Kamath (C. P. & Berar : General): Mr. Vice-President, Sir, I appreciate the arguments that have been advanced by my honourable Friend, Pandit Govind Ballabh Pant. I only wish to know from you, Sir, for how long a time these amendments Nos. 85 to 96 both inclusive are going to be held over. It will create, I submit, Sir, a very bad impression in the outside world and in our own country, if we go on postponing the consideration of the amendments dealing with the very first word in the very first clause.

Honourable Members : No, no.

Shri H. V. Kamath: And if we go on postponing the consideration of these amendments indefinitely, it would certainly create a bad impression. I want to know, therefore, for how long it will be held over.

Shri R. K. Sidhwa (C. P. and Berar : General): Sir, I am rather surprised at the argument advanced by my honourable Friend, Mr. Kamath that if we

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postpone this matter indefinitely the outside world will be rather surprised. On the contrary, if we come to a satisfactory solution and a unanimous decision on this matter, the outside world will have really a very high opinion of this House. I feel, therefore, that the suggestion made by my honourable Friend Pandit Pant should certainly be accepted unanimously. I am rather surprised that of all persons Mr. Kamath should have come forward to speak in this manner. What Pandit Pant stated was really a very fine solution and I was expecting from this House that instead of creating any kind of dissension, if we really come to a unanimous decision, it will be really a record in the history of this Constitution. I therefore, very heartily and strongly support the motion moved by my honourable Friend, Pandit Pant.

The Honourable Dr. B. R. Ambedkar : I support the suggestion made by Pandit Govind Ballabh Pant.

Seth Govind Das (C. P. & Berar : General): Sir, I wholeheartedly support Pandit Pant's proposition. The House very well knows how clear I am for naming our country BHARAT, but at the same time, we must try to bring unanimity of every group in this House. Of course, if that is not possible, we can go our own ways; but up to the time there was any possibility of reaching a unanimous decision by any compromise, that effort must be made. Sir, I support this proposition, and I hope that by the efforts of our leaders, there will not be any division on fundamental points like this, and not only this proposition, but other propositions also, like that our national language, national script etc., we shall be able to carry unanimously. I, therefore, support the views just expressed by the Honourable Pandit Pant.

Shri H. V. Kamath : I only wanted to know for how long the amendments will be held over.

An Honourable Member : It may be a day, a week or a fortnight.

Mr. Vice-President : I hold that a discussion of these few clauses should be held over till sufficient time has been given for arriving at some sort of understanding. This will be to the best interests of the House and of the country at large.

Shri Lokanath Misra (Orissa : General): Sir, I have a submission to make. If it is your decision, Mr. Vice-President, Sir, that my amendment is not to be moved, or that it is to be held over, I have no objection. Of course, I agree that my amendment consists of two parts, changing the name of India, and some other things. I am very glad that this change of the name is being held over so that we may come to some unanimous decision which will be pleasant to all. But, I submit, I should be allowed to move the rest of the amendment. That is in no way similar to the amendment moved by Professor K. T. Shah. If I had really known that, I would have said what I have to say when he moved that amendment. I, therefore, request you kindly to allow me to move the rest of the amendment, without amending the name of India.

Mr. Vice-President : Apart from the language employed, I consider that what is said in your amendment is substantially the same as what was said in the amendment of Professor K. T. Shah. It has been discussed. It cannot be discussed again.

Shri Lokanath Misra : That is taking one by surprise.

Article 2

Mr. Vice-President : The next motion is:

That Article 2 stand as part of the Constitution.

Shri H. V. Kamath : Article 1 may be put to vote.

Mr. Vice-President : That Article has been postponed. It cannot be put to vote now till all the amendments are considered.

Mr. Naziruddin Ahmad : Amendment No. 131.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That for Article 2 and Article 3, the following be substituted:

'2. Parliament may by law—

(a) admit into the Union new States;

(b) sub-divide any State to form two or more States;

(c) amalgamate any two or more of the following classes of territories to form a State, namely—

(i) States,

(ii) part or parts of any State,

(iii) newly acquired territory;

(d) give a name to any State admitted under item (a) or created under items (b) and (c) of this Article;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislative Assembly or in the case of a bi-cameral Legislature, of both Houses of the Legislature, of the State, or as the case maybe, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where the proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been ascertained'."

Sir, in introducing this amendment, I should submit that many points are involved in this. The two Articles, Articles 2 and 3, are to a certain extent overlapping. In Article 3 there are certain redundancies, and there are one or two minor gaps. I shall deal with them just now. An analysis of Article 2 shows that Parliament may admit into the Union new States and establish new States. These are the two points in Article 2. In Article 3 power has been given to the Parliament to (a) form a new State by separation of territory from a State or by uniting two or more States or parts of States, (b) increase the area of any State, (c) diminish the area of any State, (d) alter the boundaries of any State, and (e) alter the name of any State. I submit, Sir, that the first element in Article 2, admitting into the Union a new State, is covered by the first part of Article 3. With regard to Article 3, the three elements of increasing the area of a State or diminishing the area of a State, or altering its boundaries, I submit, are redundant. If you sub-divide a State, you decrease the area. If you add to one State another or a part of a State, you necessarily increase the area, and a re-adjustment of territories involves necessarily alteration of boundaries. I beg to submit that the three elements of increasing the area or diminishing the area or altering the boundaries are so necessarily implied in the other part of the Article and it would be meaningless and practically useless to embody them in the Constitution, I submit, Sir, that if you have the power to divide one State into two or more parts, or unite two States or parts of States, these three elements are necessarily implied and therefore, they need not be repeated. This element of increasing the area, diminishing the area and altering the boundaries are consequences of the other powers given. These consequences need not be mentioned. They are necessarily involved in the process of division, addition and subtraction. So to that extent these three elements must go.

Then the condition of separation of territories from a State in Article 3 (a)—for this I think a better way would be, to say, we "sub-divide" any State and form into two or more States. I think this would be a better expression; and then the element of uniting two or more States, etc., a better expression

[Mr. Naziruddin Ahmad]

would be "amalgamating any two or more States or parts of States". Then there is no power given in the existing article of amalgamating newly acquired State. The powers of the Parliament in this respect are specifically given in my amendment but this is entirely absent in the Draft Constitution.

Kazi Syed Karimuddin (C. P. & Berar : Muslim): Mr. Vice-President, the Honourable Member Mr. Naziruddin has moved an amendment to Articles 2 and 3. Article 2 has been taken up for discussion now and not Article 3. So unless both are taken up for discussion, the amendment as it stands cannot be moved.

Mr. Vice-President (to Mr. Naziruddin): Please go on.

Kazi Syed Karimuddin: What is your ruling, Sir?

Mr. Vice-President : When I said he is to go on, the decision should be understood.

Mr. Naziruddin Ahmad : That is why I have attempted to incorporate into the amendment the following points:

(a) admit into the Union new States,

(b) sub-divide any State to form two or more States;

(c) amalgamate any two or more of the following classes of territories to form a State, *viz.*,

(i) States,

(ii) Part or parts of any State,

(iii) newly acquired territory;

(d) give a name to any State admitted under items (b) and (c) of this article;

and then again the power to alter name is already given. I submit that these embody the essential features, of clauses 2 and 3. It avoids repetition and it eliminates parts of articles which are redundant, *viz*., which are necessarily implied. That disposes of the body of the proposed amendment. Then with regard to the present clause 3, ...

Shri H. V. Kamath: On a point of Order. How can he refer to Article 3 when it is not under discussion? Amendment to Article 3 cannot be taken up at this stage.

Mr. Naziruddin Ahmad: I submit that a ruling has already been given that the amendment is in order, *viz.*, that for Articles 2 and 3 the following article be substituted. This is certainly an amendment to Article 2 although it incorporates in the amendment also Article 3. So the Honourable the Vice-President has already ruled that the amendment is in order.

I submit that the phrase 'increasing area' or 'diminishing area' would not be very appropriate. You do not increase an area by addition or diminish it by means of subtraction. The words are mostly used in an intransitive sense. As an instance you can increase the area of a balloon by inflating and decrease it by deflating. Therefore I submit that these words are not appropriate. If these elements are to be retained, the words 'enlarge' and 'reduce' would be more appropriate. The increase of an area by addition or reduce it by subtraction is not in current use, but at any rate the other objection is that they are absolutely redundant. I therefore submit that the body of the proposed new Article 2 should be accepted.

With regard to the proviso, the only effect of the amendment would be that in the proviso (a) in part I there is a condition of representation in the Legislature. In No. 2 there is the question of the resolution. I submit Part 1 of proviso (a) should be deleted. A Resolution as mentioned in Part 2 of clause

(a) of the Proviso is better. So the only effect of the change of proviso is to eliminate Part 1 of Proviso (a). These are the essential changes proposed in this amendment, *viz.,* elimination of some of the points which seem to me to be redundant. There are one or two points which seem to have been overlooked. In proposing this amendment I do so with great respect. I do not in the least disparage the high quality of work which the Drafting Committee has done.

My next amendment which I shall move in this connection is as follows:—

"That in Article 2 the words 'from time to time' be deleted."

The words 'from time to time' have caused some amount of trouble before. These words have been provided for in the General Clauses Act. Under that Act if any power or right is given, it is understood that unless the contrary is specifically indicated that the power or right may be exercised "from time to time as occasion arises". It follows that if any power is given, unless the contrary is definitely stated, that power may be exercised from time to time. This expression appears again and again in the Draft Constitution. We have put specific provisions in the Draft Constitution itself in Article 303, Clause (2) which provided that in the interpretation of this Constitution, the provisions of the General Clauses Act shall apply. I shall read out this clause—

"Unless the context otherwise requires, the General Clauses Act, 1897 (X of 1897), shall apply for the interpretation of this Constitution."

The Government of India Act was controlled in this respect by the U . K. Interpretation Act of 1889, and this clause (2) of Article 303 is similar to that provision in the Government of India Act. It, therefore, follows that in the interpretation of this Constitution, we should have regard to the General Clauses Act. And the General Clauses Act definitely provides for this thing, that the words "from time to time" need not be repeated again and again. If we say that the President can give a ruling on points of order, it implies that he can give the ruling as and when occasions arise, from time to time. So in practical life, and in daily drafting of Statutes, we find it as an invariable rule that this phrase is not repeated, here and there, and now and again. In this Constitution itself, the words "from time to time" do not appear everywhere. The House will see that in Article 2, line 1, the expression 'from time to time' appears. "Parliament may, from time to time..." do certain things. But coming to Article 3, we merely find "Parliament may, by law....." and no 'from time to time' occurs there. There are numerous other places where the words 'from time to time' in a similar context do not appear. I submit that the drafting should be uniform. If in one place we introduce the phrase 'from time to time', and if we do not introduce it in another analogous place, the argument may be made that in one place the power may be exercised from time to time, and in the other place it may not be exercised from time to time. It is this reason that I say that there should be some uniformity in the matter of drafting. The words 'from time to time' must be excluded. But if they have to be introduced at all, they have got to be introduced in all other similar places.

With these few words, I submit my amendment for the consideration of the House. I merely wanted to raise these points for discussion, and if necessary for redrafting of the article, if the points are worthy of consideration.

Shri Ananthasayanam Ayyangar: Sir, I oppose these amendments. These are verbal matters and I would even appeal to you not to allow such amendments. I request you to put it to vote now.

The Honourable Dr. B. R. Ambedkar: I oppose the amendments.

Mr. Vice-President : I will put the amendments nos. 131 and 132 to vote. Dr. Ambedkar has spoken already and there cannot be any further discussion.

Kazi Syed Karimuddin: Sir, on a point of order. If this amendment is accepted, it will amend Article 3. Therefore, unless a ruling is given that Articles 2 and 3 should be discussed and taken into consideration in regard to this amendment, this cannot be put to vote now. If it is accepted, as I said, it will amend Article 3 also.

The question is:—

"That for Article 2 and Article 3, the following be substituted:

'2. Parliament may by law—

(a) admit into the Union new States;

(b) sub-divide any State to form two or more States;

(c) amalgamate any two or more of the following classes of territories to form a State, namely—

(i) States,

(ii) part or parts of any State,

(iii) newly acquired territory;

(d) give a name to any State admitted under item (a) or created under items (b) and (c) of this Article;

(e) alter the name of any State:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislative Assembly or in the case of a bi-cameral Legislature, of both Houses of the Legislature, of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where the proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been ascertained; and

That in article (2), the words "from time to time" be deleted'."

The amendments were negatived.

Mr. Vice-President : Amendment No. 133, I find is connected with the Preamble, and so it may be taken up later, this is not the appropriate place for it.

Amendment Nos. 134 and 135, are not moved.

Amendment No. 136 has been disposed of.

Amendment No. 137 is a verbal change and I rule it out of order.

Amendment No. 138 is not moved.

Then I put Article 2.

Shri H. V. Kamath: Sir, I wish to speak on Article 2.

Mr. Vice-President Sir, it appears to me that there is a little lacuna in this Article which my Honourable friend, the able jurist and constitutional lawyer that he is, will rectify, when it is finally drafted by the Committee. If we turn to the report of the Union Constitution Committee—I am reading from the reports of the Committee, Second Series, from July to August 1947, copy of which was supplied to each member last year—there Article 2 begins thus:—

"The Parliament of the Federation" of course, we have changed the word Federation into Union but here you import the word 'Parliament' suddenly in Article 2 without saying to which Parliament it refers. This is a lacuna, because there is nothing so far in the previous article regarding Parliament. So we must say here the "Parliament of the Union". This lacuna, I hope, will be rectified.

The Honourable Dr. B. R. Ambedkar: We shall take note of what Mr. Kamath has said.

Mr. Vice-President : Then the question before the House is that Article 2 form part of the Constitution.

The motion was adopted.

Article 2, was added to the Constitution.

Article 3

Mr. Vice-President : Now we come to Article 3.

Amendment No. 139 is a negative amendment and is out of order.

Then we come to Amendment No. 140. Not moved.

The Honourable Shri K. Santhanam (Madras : General): Sir, I move:

"That in clause (a) of article 3, the following words be added at the end:

'or by addition of other territories to States or parts of States'."

I need not take up the time of the House. It only makes clause (a) logically perfect, because a new State can be formed by having a part of one of the acceding States and adding to it other territories which may be acquired by India.

Shri M. Ananthasayanam Ayyangar : I request the House to accept the amendment because by this addition alone will the article become complete.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I am agreeable to the principle of the amendment moved by my friend Mr. Santhanam. The only point is that I like slightly to alter the language to read "or by uniting any territory to a part of any State".

The Honourable Shri K. Santhanam : I am agreeable to the change.

Mr. Vice-President : the question is:

"That in clause (a) of article 3, the following words be added at the end:

'for by uniting any territory to a part of any State'."

The motion was adopted.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That the following new proviso be added after clause (e) of article 3:

'Provided that every proposal for legislation which increase or diminishes the area of an existing State, or alters its name or boundaries, shall originate in the Legislature of the State concerned or affected, in such form as the rules of procedure in the Legislature concerned consider appropriate'."

Sir, here is a proposal to consult first the Legislature of the State, whose name or boundaries are proposed to be altered, or whose areas are proposed to be increased or diminished. We are all aware that the existing Units which make up this Federation are not equal *inter se* are not logical, are not happily constructed so as to minister to the development of the country or even of the areas themselves. It is necessary, and it will soon perhaps have to be implemented in some form or another, that these areas be reconstructed. That would mean that their boundaries, perhaps even their name, and their territories, may be altered, upwards or downwards. If that becomes necessary, then I submit the proper course would be to consult the people themselves who are affected, if not by a direct Referendum to the people affected, at least by a consultation of the Legislature, rather than that the change be imposed from above, as in my opinion the clause as it stands requires. The parties primarily affected are the people themselves of the areas whose boundaries or name is to be altered, or whose position has in any way to be reconstructed. And it is but a simple proposition—a mere matter of fundamental principle I submit—that you should in a democratic regime consult the peoples affected, and not merely lay it down from above. I recognize that the article as it stands provides that in any such event you should have either a representation from the representatives of the people in the Central Parliament to suggest such an alteration, or alternatively the President should have received some such

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representation from the people concerned. But it will be the act of the Central authority, and not of the people primarily affected to suggest this variation. I submit that that is in principle a wrong approach.

I am afraid that the general trend of the Draft Constitution, as I view it, seems excessively and unnecessarily to place power and authority in the Centre, to the serious prejudice not only of the Units, but even of the very idea of democracy as we flatter ourselves we are embodying in this Constitution. If it is a democratic Constitution, if we desire that the people should govern themselves, or that, even if they are not prepared today to do so, they should learn necessarily by mistakes, to be fit for and practice self-government, then I think it is of the utmost importance that a provision like this should be insisted upon.

Any question which relates to the alteration of the present units, their territories, boundaries or name, should begin with the people primarily affected, and should not come from the authority or power at the Centre. The authority at the Centre obviously is not familiar with local conditions; or they may have other outlook, may have other considerations, other reasons, for not accepting or agreeing to such a course. The authority at the Centre, even if moved by the representatives of the areas concerned by some resolution or other procedure, may be guided by the very few persons which, under any scheme of election, will constitute the representatives of those areas in the Central Parliament; and not really consult the entire population, the adult voters of the areas concerned, which I submit is the first requirement of any such readjustment.

Lest I should be misunderstood, I would at once add that I am certainly not in love with the present position, or the continuance of the alignment of the provinces and States as they stand today. They need to be altered, they must be altered. But they must be altered only as and how the people primarily affected desire them to be altered, and not in accordance with the preconception, the nation, of such adjustment that those at the Centre may have, even if some of those at the Centre are the representatives of the people concerned.

I make it imperative, therefore, that the first proposition, the initiation of the movement either to integrate or to separate, either to readjust the boundaries or to bring about any new form of configuration, must commence with the people themselves. There is another consideration in the matter, which also should not be ignored, namely that in any such readjustment, it will not be one single group that will be affected or concerned; there may be at least two or more which are likely to be affected; and as such the representatives of those two groups, or those more than two groups in the Centre, may not be quite competent to reflect the views of the people as a whole. I admit that in democracy majority rule should prevail. But the majority has not the monopoly of being always right and still less to be always just. If that is so—and I strongly believe it is so—then I submit that the only cure, if you wish to retain democracy, is to secure the assent in advance, to make the initiation, from the beginning, from or by the people concerned in suggesting such readjustment.

The actual readjustment of boundaries, the actual formation of new units, may be left to competent Boundary Commission, or to any other body or authority that may be set up, either *ad hoc* for the particular purpose, or in general terms as a kind of a statutory, constitutional authority, semi-judicial in character, that may decide upon and settle these matters. But in the absence of any such provision, and apart altogether from such mechanism that may be set up hereafter, I think the principle must never be lost sight of that the matter should originate, and should originate alone, with the peoples concerned. I personally would advocate a direct Referendum rather than merely

a vote of the Legislature, but lest the suggestion of a referendum sound too revolutionary to be entertained by a respectable House like this, I suggest—and I have put in the amendment—the idea only of the Legislature being consulted, and not necessarily the people as a whole. I trust this evidence of my intense, ingrained moderation would commend itself to the House, and allow the amendment—not merely to be opposed by a simple formal "I oppose", but by some sort of a reasoned answer rather than a flat. Sir, I commend this proposition to the House.

Rai Bahadur Syamanandan Sahaya (Bihar : General): Sir, may I make a submission. I think that if Dr. Ambedkar moves his next amendment things will be clarified and such of us as have amendments in our names will be able to decide whether we should move them or not.

Mr. Vice-President : I agree with you fully. Dr. Ambedkar may move his amendment.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for the existing proviso to article 3, the following proviso be substituted:

'Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State, or as the case may be, of each of respect to the provisions thereof have been as certained by the President; and the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been as certained by the President; and

(b) where such proposal affects the boundaries or name of any State of States for the time being specified in Part III of the first Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been obtained'."

Mr. Vice-President, if one were to compare the amended proviso with the original proviso as it was set out in the Draft Constitution, the Members will see that the new amendment introduces two changes. One is this : in the original draft the power to introduce the Bill was given exclusively to the Government of India. No Private Member of Parliament had the power, under the original draft, to propose any legislation of this sort. Attention of the Drafting Committee was drawn to the fact that this was a somewhat severe and unnecessary curtailment of the right of the members of Parliament to move any motion they liked and in which they felt concerned. Consequently we deleted this provision giving the power exclusively to the Government of India, and gave it to the President and stated that any such Bill whether it was brought by the Government of India or by any private Member should have the recommendation of the President. That is one change.

The second change is this : under the original Article 3, the power of the Government of India to introduce legislation was restricted by two conditions which are mentioned in (a) (i) and (ii). The conditions were that there must be, before the initiation of any action, representation made to the President by a majority of the representatives of the territory in the Legislature of the State, or a resolution in that behalf passed by the Legislature of any State—whose boundaries or name will be affected by the proposal contained in the Bill. Here again, it was represented that there might be a small minority which felt very strongly that its position will not be safeguarded unless the boundary of the State were changed and that particular minority was permitted to join their brothers in the other State, and consequently if these brothers remained there, action would be completely paralysed. Consequently, we propose now in the amended draft, to delete (i) and (ii) of (a) and also (b) of the original draft. These have been split up into two parts, (a) and (b). (a) deals with reorganisation of territory in so far as it affects the States in Part I, that is to say, Provinces and, (b) of the new amendment relates to what are now called Indian States. The main difference between the new sub-clauses (a) and (b) of my

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amendment is this : In the case of (a), that is to say, reorganisation of territories of States falling in Part I, all that is necessary is consultation. Consent is not required. All that the President is called upon to do is to be satisfied, before making the recommendation, that their wishes have been consulted.

With regard to (b), the provision is that there shall be consent. The distinction, as I said, is based upon the fact that, so far as we are at present concerned, the position of the provinces is different from the position of the States. The States are sovereign States and the provinces are not sovereign States. Consequently, the Government need not be bound to require the consent of the provinces to change their boundaries; while in the case of the Indian States it is appropriate, in view of the fact that sovereignty remains with them, that their consent should be obtained.

As regards the amendment moved by Prof. Shah, I do not see much difference between my amendment as contained in sub-clause (a) of the new proviso and his. He says that the discussion shall be initiated in the States. My sub-clause (a) of the proviso also provides that the States shall be consulted. I have not the least doubt about it that the method of consulting, which the President will adopt, will be to ask either the Prime Minister or the Governor to table a resolution which may be discussed in the particular State legislature which may be affected, so that ultimately the initiation will be the local legislature and not by the Parliament at all. I therefore submit that the amendment of Professor Shah is really unnecessary.

The Honourable Shri K. Santhanam: Mr. Vice-President, I wonder whether Professor Shah fully realises the implications of his amendment. If his amendment is adopted, it would mean that no minority in any State can ask for separation of territory, either for forming a new province or for joining an adjacent State unless it can get a majority in that State legislature. I cannot understand what he means by 'originating'. Take the case of the Madras Province for instance. The Andhras want separation. They bring up a resolution in the Madras legislature. It is defeated by a majority. There ends the matter. The way of the Andhras is blocked altogether. They cannot take any further step to constitute an Andhra province. On the other hand, as re-drafted by the honourable Dr. Ambedkar, if the Andhras fail to get a majority in the legislature, they can go straight to the President and represent to him what the majority did in their case and ask for further action removing the block in the way of a province for them. If they are able to convince the President, he may recommend it and either the Government of India may themselves sponsor legislation for the purpose or any private Member or a group in the Central legislature can take up the question. Therefore, by Mr. Shah's amendment instead of democracy we will have absolute autocracy of the majority in every province and State. That is certainly not what Professor Shah wants. But, unfortunately, in his enthusiasm for what he calls the principle, he has tabled an amendment which altogether defeats his object. I therefore suggest that the amendment shall be rejected and the proposition moved by Dr. Ambedkar should be accepted.

Mr. Vice-President : Mr. Sidhwa.

Shri R. K. Sidhwa: Mr. Vice-President.

Shri H. V. Kamath: Sir, are we considering amendments 149 and 150 together? There are two amendments to amendment 150.

Mr. Vice-President : Let us hear what Mr. Sidhwa has to say. We will certainly take up the amendments to which Mr. Kamath has drawn attention.

Shri R. K. Sidhwa: I do not accept the arguments advanced by Mr. Santhanam against the amendment moved by Professor Shah. He stated that if in the Madras legislature a motion for the separation of the Andhra is lost by a majority, the Members affected will have the right to represent their case to the President at the Centre, under the proposition moved by Dr. Ambedkar. If, Sir, that is the effect of the proposition, I do not welcome it. It will be unfair to seek the aid of the President against the expressed wish of the majority under democracy. If the majority say that they do not want separation of the Andhras, the minority should not have the right to go to the President by the back door and urge separation.

But Sir, I do not share the views of Professor Shah in this matter. Dr. Ambedkar's amendment is very clear and comprehensive. It states that if anybody wants a change of name or separation, he can move for that in the local legislature. This is what Prof. Shah wants too. But I do feel that Dr. Ambedkar's official amendment is more comprehensive and should be supported. Though Professor Shah says that he has in mind referendum on matters of this kind, the amendment does not mention it. If a referendum is to be taken, the legislature has the necessary power to ask that it be done. The arguments advanced by Mr. Santhanam do not appeal to me. But, as I said, Professor Shah's amendment restricts the utility of the Provision. I therefore commend the amendment of Dr. Ambedkar to the House.

Mr. Vice-President : Mr. Naziruddin Ahmad may move his amendment.

(The amendment was not moved.)

Mr. Vice-President : Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru (United Provinces : General): Mr. Vice-President, I beg to move:

"that in the amendment of Dr. Ambedkar as just moved, for the words 'the previous consent' the words 'the views' and for the words 'has been' the words 'have been' be substituted respectively."

Sir, the object of my amendment, as honourable members will clearly see, is to place the States specified in Part III of the First Schedule on the same footing as the States specified in Part I of the Schedule so far as the reorganisation of the territory of any State is concerned. Dr. Ambedkar has told us why the amendment that he has proposed deals differently with the States mentioned in Part I and the States mentioned in Part III of the Schedule. He has expressed the opinion that the States mentioned in Part III of the Schedule are sovereign States and that they therefore enjoy a higher status than the provinces. Consequently, while the consent of the provinces is not necessary to a reorganisation of their territory, the consent of the States in Part III of the Schedule is required if their boundaries are to be altered in any way.

Now, I submit, Sir, that there are several provisions in the Draft Constitution that do not proceed on theory just now outlined by Dr. Ambedkar. Take Article 226 for instance. This Article lays down that, when the Council of States has declared by the prescribed majority that it is necessary or expedient in the national interests that Parliament should make laws with respect to any matter enumerated in the State List specified in the Resolution, "it shall be lawful for Parliament to make laws for the whole or any part of the territory of India with respect to that matter". It is clear from this provision that notwithstanding the sovereignty of the States mentioned in Part III of the Schedule, the Dominion Parliament can in certain circumstances legislate on subjects in regard to which legislative power has not been made over by these States to the Dominion Parliament in their Instruments of Accession. I know that this clause has been amended by the Drafting Committee. It has been provided that the declaration made by the Council of States in regard to the necessity or desirability of legislation of the kind mentioned in Article 226

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should be limited to three years at a time, but it can be renewed from time to time. But whatever the duration of the power that the Dominion Legislature will acquire under Article 226 may be, it is clear that notwithstanding any difference between the provinces and the Indian States, the Dominion Parliament will in a certain eventuality be able to legislate in regard to a subject in connection with which the Indian States have not parted with their own legislative power. I see no reason therefore why, proceeding on the principle on which Article 226 of the Draft proceeds, we should not provide that in the case of the reorganisation of territories too, the provinces and the Indian States should be placed on the same footing.

Article 226 does not provide the only instance in which the States and the provinces will be dealt with in the same manner, whatever the Instruments of Accession may say. For another illustration, I would ask the House to refer to Article 230 which deals with the implementation of international treaties, agreements and conventions. This article lays down that Parliament has power to make any law for any State or part thereof for implementing any treaty, agreement or convention with any other country or countries. Now, I could have understood, if Dr. Ambedkar's theory was to be acted upon consistently, the exclusion of the States specified in Part III of the Schedule from the operation of Article 230; but as a matter of fact this Article, if accepted by the House, will affect not merely the provinces or the States mentioned in Part I of the First Schedule but also the Indian States, *i.e.*, the States mentioned in Part III of the Schedule. Whatever the Instruments of Accession may say, the Dominion Parliament will have the power to carry out international treaties, agreements and conventions, even though they may relate to subjects specified in the State List.

Sir, there is yet another example that may be given to show that the draft Constitution has, in an important matter, given power to Government to direct the States to act in a particular manner. I refer to Article 294 of the new Draft. Article 294 as previously drafted provided for minority representation in the Legislative Assemblies of the States specified in Part I of the First Schedule. The article as drafted now compels the Assemblies of the States specified in Part III of the First Schedule also be reserve seats for the minority communities mentioned therein in the Legislative Assemblies of the States. This is another illustration of the manner in which the draft Constitution has imposed liabilities or responsibilities on the States mentioned in Part III of the first Schedule, notwithstanding what Dr. Ambedkar has said about their sovereign status.

Now it may be said, Sir, that the examples that I have given from the draft Constitution do not indicate that the Dominion Legislature will be able to exercise any power in regard to the States mentioned in Part III of the Schedule, notwithstanding anything to the contrary in the Instruments of Accession. It may be contended that the Instrument of Accession will be accepted only when the States accept the responsibilities mentioned in Articles 226, 230 and 294. If that is so, why cannot Government go further and require the States to agree to a reorganisation of their boundaries in such manner as might be considered desirable by the President in consultation with them? I am not asking that the States should have no voice in connection with matters relating to their territorial limits. All that I am asking for is that the consent of the States should not be necessary for a re-organisation of their territories. Consultation with them should be quite enough. Normally their legislatures should be consulted, but as we are not certain that every State has or will soon have a legislature, I was unable to table an amendment requiring that in the case of the States, too, the opinions of the legislatures concerned should be

obtained, before any action is taken. I do not see, why the previous consent of the States should be required in connection with Article 3 and more than it is required in connection with matters dealt with in Articles 226, 227 and 294. If Government desire to be consistent, it is incumbent on them, in my opinion, to accept the amendment that I have placed before the House. They cannot in conformity with the position taken up by them in the draft Constitution raise any objection on principle to the amendment that I have moved.

Sir, if my amendment is as I think free from all theoretical objections, can any practical grounds be urged for dealing with the States differently from the provinces? I do not think that there is any reason whatsoever why the States specified in Part III of the Schedule should have the permanent right to veto their territorial re-organisation, however necessary or desirable it may be in the public interest. There are unions, Sir, that are very small; their revenues are too limited to enable them to fulfil the duties that Governments have to shoulder in modern times. Is it desirable that these States should in utter disregard of the interests of their citizens always rule out all proposals relating to the re-organisation of their territories? If Government bear in mind the interests of the people, not merely in the States specified in Part I of the First Schedule but also of the States specified in Part III of the First Schedule, it is necessary for them to take power in their own hands to deal with the question of territorial re-organisation, whether it concerns the provinces or the Indian States, in any manner they like. If they fail to do so, they may justly be accused by the inhabitants of the States specified in Part III of the First Schedule of treating them in a step-motherly manner and leaving them to carve out their future as they best may with their own unaided resources. The whole principle on which the Draft Constitution is based is that in certain essential matters, the Central Government should have adequate powers to arrive at decisions and to execute them in the interests of the entire territory of India. My amendment, Sir, proceeds on the same basis and I submit that it would be inconsistent and unjust on the part of the Government if they were to reject my proposal merely on the ground that the States, though they will be compelled to bow to the wishes of the Indian Legislature in certain matters, should not be compelled to fall in line with the provinces in regard to the re-organisation of their territories, however urgent the matter may be.

Rai Bahadur Syamanandan Sahaya: Mr. Vice-President, Sir, the desire for the formation of provinces and the re-distribution of boundaries of existing provinces and States is, in my opinion, assuming the proportions of an epidemic, I feel that the two words "linguistic" and "cultural" have never been more misused than in recent times. In framing a legislation, and particularly a legislation of the type we are considering, it is necessary for us to decide what type of tendencies we should encourage and what types of tendencies we should not encourage. It is from this angle that I am making a few submissions in connection with this Article and the amendments before us.

I have no doubt that the amendment proposed by Dr. Ambedkar to his own draft has been guided by some such consideration that I have just placed before you and the House. The Draft as it stands only lays down that a Bill for re-distribution of boundaries or for re-naming a State would be introduced if the majority of the representatives of the territory expressed a desire to that effect. Of course, the language of the Draft as it stands is, in my opinion, ambiguous. Because, representatives of the territory, as it stands in the Draft, may mean the territory of the whole province, and the representatives of the entire province under the existing Draft may be required to give their opinion before legislation of the type could come into Parliament. Since then, Dr. Ambedkar has moved an amendment which makes a distinction between the manner of ascertaining the views of the Provinces, and the States specified

[Rai Bahadur Syamanandan Sahaya]

in Part III of the First Schedule. Although I agree with one observation which has recently been made by Pandit Kunzru that there is no reason for this differentiation, I do not agree with the amendment which he has proposed. I feel that in both the cases of the Provinces and the Indian States, the words 'previous consent' should occur. In part (a) of the Proviso as suggested by Dr. Ambedkar, the words are: "where the proposal contained in the Bill affects the boundaries of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State or as the case may be of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President." This is, Sir, relating to the Provinces. When he comes to part (b) of this Proviso, concerning the States referred to in Part III of the First Schedule, (ii) the Indian States he says; "the previous consent of the State or as the case may be, of each of the States to the proposal has been obtained." Now, Sir, there is a difficulty which I envisage in this amendment. Supposing the re-distribution of boundaries concerns one State referred to in Part I of the First Schedule and another State referred to in Part III of the First Schedule, the result would be that in the case of the State referred to in Part I of the First Schedule the views of the Assembly will be ascertained and in the other case, the consent of the State will be required so that, if the State referred to in Part III of the First Schedule does not give consent, even though the province may agree, the re-distribution will not take place. I, therefore, feel with Pandit Kunzru that there should be no distinction between the two provisions; but instead of leaving the door very wide open in the provinces, I would submit that Dr. Ambedkar should consider if it would not be proper that the word 'consent' used in the case of States referred to Part I of the First Schedule also. I had an amendment in my name, being number 161 on the list. But, I feel that this amendment of Dr. Ambedkar will receive a great deal of support in this House and the amendment suggested by me in the Draft as it stands will have no chance. I therefore make a request that even at this late stage, if the mover has no objection, you may kindly accept an amendment to use the word "consent" for the word "views" in part (a) of the proviso as moved by Dr. Ambedkar.

Pandit Thakur Dass Bhargava (East Punjab : General): *[Mr. Vice-President, I have come here to express my views on this amendment and on the amendment moved by Prof. K.T. Shah. The amendment moved by Dr. Ambedkar on this Bill is more stringent than the original one.

The first point which I would like to submit is that every part of India should be given this facility, that, should it decide to secede from one part and to accede to another, then there should be no impediment in its way. India of ours, which was under the domination of the British, is sub-divided into unhomogeneous parts which have grown in haphazard manner. Not only there are districts, which want to secede from one province and to accede to another, but there are even Tahsils and parts comprising ten to twenty villages who want to secede from one part and to accede to other parts. This Article is sufficient to throttle them. For example, I would like to mention that Hariyana, which is at present included in East Punjab, has been trying for the last forty years to get itself attached to areas whose language, customs and traditions are similar to its own and to get constituted into a separate province. But it could not succeed. The reason was that when this was discussed with U. P. leaders they at once stated that this was a device to parcel out U. P. They did not even consider whether it was a right thing to do or not. Provincialism and other ideas have become so ingrained in us that nobody is

* [ ] Translation of Hindustani speech.

prepared to judge a thing on its own merits. I would like to know why in a part of Natural Area where there is not a single Sikh, teaching of Gurmukhi has been ordered. Today, in 1948, orders have been passed to teach Gurmukhi in an area where not a single Sikh resides and the result will be that children of that area will be forced to learn Gurmukhi. This Article, now sought to be moved, will make impossible the position of those leaderless areas, who wish to find a way out of this confusion. There will no attractive life to them, because according to this Article the right which should vest in every Member of Parliament is being given to the President. I would like to submit most respectfully that today, there are several provisions in the Government of India Act which debar a member from introducing a bill of a particular nature. Whenever I had wanted to introduce a Bill regarding joint Hindu family with the object of exempting the family from taxation, I found that it could not be done without prior sanction. Whenever I applied for sanction, that was refused. I am aware that the method of work of all the Governments is the same. The sanction of the President implies that Member, having the right to introduce a Bill, will not get the requisite sanction. Dr. Ambedkar has just said that this point was raised before him and that is why he has made the change that instead of Government introducing the Bills, Members also should be able to do so. But he has made the law more stringent than heretofore. If Government takes the responsibility for the bill, then it could get it passed. But since the giving of sanction will entirely depend on its recommendation, no moral influence will be there. If the President and the Cabinet do not want it and do not recommend it, then Parliament, not to talk of the individual, can do nothing. Recommendation means that the power of originating such a bill has been taken away from the Members. Therefore I submit that this provision is most undemocratic. Similarly, I would like to state that under article 34, which gives the discretion to Parliament to delegate any of its powers to the President or to any one else, Parliament will not be competent to bring any legislation for changing the boundaries of provinces unless the President's recommendations is there. This is a right of a Member and it will be taken away by this provision. Since the war we have been hearing that everyone has got the right of self-determination. This provision takes away that right. If the people of an area want separation, then the right of self-determination should be given to them. Prof. K. T. Shah while elaborating his amendment has stated that he is afraid of referendum, but the proposal put forth by him strikes at the very root of self-determination. For example, if any part of a big province wants to break away then the only course before it is to bring the matter before the Members. But by doing so the very purpose would be defeated because the majority would always reject such a proposal. The principle, underlying the amendment of the learned Professor, is right but his suggestion is wrong. In my opinion a provision should be evolved whereby separation maybe effected by holding a referendum of the people of the area desiring to separate. I know the result will be that many areas would like to go out and the provincial legislature would never agree to that. Therefore, there would be no use in taking the vote of the whole House as small areas will not get a vote. In the old Government of India Act a similar provision existed. In 1946, I had tabled a resolution in the Assembly for the appointment of a Commission for redistribution, but unfortunately it could not be taken up. A proposal was also put before the Cabinet Mission for appointing a Commission for the redistribution of the provinces. Now a linguistic commission has been appointed. I hear attempts are being made to shelve its activities. I would like the Congress Government to respect the wishes of the areas, which desire to separate from any province and that no hurdles are paced in their way; on the other hand, all legal aid should be given for the formation of a new province. But so long this Section exists areas comprising even two or for districts, will not be heard at all. The previous condition that only the vote of the representatives of the territory, which wants

[Pandit Thakur Dass Bhargava]

separation, should be taken, has now been deleted. Now it is proposed that the vote of the legislature should be taken. No provincial legislature would agree to the separation of a part, and the representatives of the affected area will be so influenced that they would not be able to give free expression to their views. Therefore, holding of a referendum is necessary. Parliament, and not the President, should have the right to determine the matter after taking into account the opinion of the people of the area concerned and of the vote of the provincial legislature. It is therefore necessary that every Member of the Parliament should have the right to give notice of such a bill. Views of the provincial legislature may be taken but the changes should be effected in accordance with the wishes of the people of the area, who want separation. If this is not done then the principle of self-determination would be nowhere. We used to hear that after the attainment of Swaraj the right of self-determination would be given to all. This Section will put an end to that right, and no justice would be done to the people. I belong to a small district, Hissar. It is an epitome of India. Boundaries of many provinces meet in Hissar, *e.g.*, Jind. Jind State having 88 per cent Hindu population, and only 12 per cent Sikhs has been included in the Eastern Punjab States. Formerly, Delhi was a part of U.P. Six districts of Ambala Division were also included in it. In 1857, Lawrence, who had annexed this area, was made Governor of the Punjab and so this territory was included in the Punjab Province. For a very long time we tried that Delhi and Ambala Division be separated from the Punjab, because this territory had nothing in common with the Panjab, but our efforts bore no fruit. Now, after the partition it remains to be seen as to what would happen to this area; with whom will Delhi and Ambala Division be tagged and whether Punjabi or Hindi would be its language. Now, we hear that we are to be included in a Punjabi speaking province. Our children, who have nothing to do with Punjabi language, will have perforce to read Punjabi. Nothing could be more cruel than this. This provision gives no freedom. The Constitution is being forged to enable people of every part of the country to live in peace, and to evolve an organic life for themselves. But under Article 3 and this amendment, each and every part would not be able to attain freedom for itself. Therefore, I say that the provision is undemocratic, and that it restricts the rights of the Parliament. Views of the legislatures may be invited, and may be taken into consideration; but the determining factor should be the vote of the people of the area, which wants to separate. For this, there is no provision under the present law. With these words, I would like to emphasise that it should be so amended that even the smallest areas in the country may be able to achieve full freedom.

Shri Rohini Kumar Chaudhari (Assam : General): Sir, it is my misfortune to have to oppose the amendments moved by the two stalwart Members of this House, namely, Prof. Shah and Pandit Kunzru. I oppose them not because I like them less, but because I like Dr. Ambedkar's amendment more, as it meets the present situation very well. Sir, I do not object to Prof. Shah's amendment on the ground of its wording or its unsatisfactory character or to the word' originate'. I entirely agree with him that no such motion should be considered in any House if the State which is affected is not at all in favour of it. I say that if there is not a single Member of the legislature in a State who countenances the idea of separation, it is unthinkable that the Central Legislature would take up that matter. To that extent, I agree with Prof. Shah. But I am opposed to his amendment on the ground that is very restrictive. It does not allow a motion to be moved by any other authority or by a private Member other than the Government of India itself. On that point I consider that this amendment should be opposed.

Then coming to the amendment of Pandit Kunzru, I consider that his amendment lays down a rather dangerous principle, dangerous at this stage. It

smacks of a repetition of Dalhousie's annexation policy. It gives to the Central Legislature the power to alter name of a State, to change, increase or diminish the boundaries of a State, without any previous consent of that State. We have thus far proceeded very contiously in the matter of the States — thanks to Sardar Patel. We have not asked for any merger or accession without the consent of the State itself, except probably in the case of the police action in Hyderabad — and we do not know how it will end after all. So, what I say is, if at this stage we give the idea to the States that it will be open to the majority of the Central Legislature at any moment they think fit to take one part of a State and tag it on to another province or to saddle it with an unprofitable part of a province, that will be a most unwise thing and that will put the States on their guard, and that will end the amity with which they are now coming in and joining us. Certainly, I agree that some powers of interference have been reserved in our Constitution by articles 226 and 230. But they also show how cautiously we are proceeding in this matter. After all, you must not ask your host to give up his bed for you, merely because he has allowed you shelter. Merely because the States now are showing their inclination to come and join us in all matters, we must not ask them to agree to a proposition whereby you will be able to alter their name, diminish their area, or change their boundary or do anything of that kind, without their consent.

With these words, I support the amendment moved by the honourable Dr. Ambedkar. I would only ask him, or anyone in the House to tell me whether the word 'President' means that the recommendation of the President would be given with the consent of the Government, or whether the President can independently act in exercise of his discretion. The word 'discretion' is not used, of course, but I would like to know if he can exercise his discretion in allowing a motion of that kind. I consider that it will be more reasonable to allow the President to exercise his discretion, rather than that he should be guided by the opinion of his Government in this matter. There are other provisions in the Draft Constitution where the President undoubtedly uses his discretion, without consulting the Government or the Central Legislature, though the word 'discretion' has not been used. For instance, in the matter of remission of sentences, the President will never be called on to take the consent of his Ministry in remitting a sentence or refusing to remit a sentence. All the same, that Article is there, without the addition of the word 'discretion'. Therefore, I consider that the interpretation which Dr. Ambedkar puts is correct, and when the word 'President' stands alone, it means he will be able to exercise discretion in such matters.

Shri Gopikrishna Vijayavargiya [United State of Gwalior — Indore — Malwa (Madhya Pradesh)]: Mr. Vice-President, Sir, I am not going to speak against or for any of these motions. I have only to make certain observations, as I come from an Indian State and want to give expression to the feelings of the people of the States in this matter. I think, Sir, that the people of the States do not want any discrimination in the matter of consent or no consent (*Hear, hear*). In fact, our wish is that the States must be put on the same level as the Provinces (*Hear, hear*), and therefore, there is no question of taking the consent of the States. In fact, I would be very glad if this article could have been amended in some such way, at least, to the effect that the States Legislatures might be consulted. I think, mere consultation would be sufficient in the matter of the States also as it is in connection with the Provinces. I think, Sir, the question of the sovereignty of the Rulers or of the States should not be brought up. I think, Sir Stafford Cripps when he came to India also gave a definition of the States and thought that the Rulers are the States, and now some such anomaly may be created again. I say the wish of the States' people is that there should not be any discrimination in favour of the

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States, and consent is not necessary. You might put the States on the same level as the Provinces. The people of the States have always contested the sovereignty of the rulers — they do not accept the sovereignty of the rulers. Most of the States have been tiny; now they have merged with some of the Units but the question would crop up again if sovereignty were given to the rulers. The people of the States are fully the kith and kin of the people of the Provinces — they are the same as those in the Provinces. We do not like to further fragment our country on the same old lines. The distinction of the Indian States and the Provinces is still being maintained, but now we think that this distinction must go. The House must consider any thing that may help in the States being brought on a par with the Provinces, would have liked if this whole Assembly had been delayed for some time, or postponed, so as to bring the States on a par in all affairs with the Provinces. I think the States Ministry ought to have done that a little earlier. This is really worth while doing, because we are making a Constitution and it will be very difficult to change it afterwards. I therefore think that this discrimination must go. I request Dr. Ambedkar to find out some way for this. In this matter I voice the feelings of the people of the States. I am not speaking on any particular amendment.

Shri M. Ananthasayanam Ayyangar: Sir, the question may now be put.

Mr. Vice-President : What is the feeling of the House?

Shri H. V. Kamath: No, no. This is a very important matter.

Mr. Vice-President : Prof. Shibbanlal Saksena.

Prof. Shibban Lal Saksena: Mr. Vice-President, Sir, this is a fundamental matter, and the amendment tabled by Dr. Ambedkar is a very important one. In his explanation he has said that his amendment enables any Member to given notice of private Bills for changing boundaries, and on receipt of that Bill the President will take certain steps to ascertain the opinion of the Legislature concerned, and then on the advice of the Prime Minister recommend that the Bill be brought up. My friend Shri Thakur Dass Bhargava just now said that this amendment is really far more stringent than the original clause. I do not agree with that view. Under the original clause, only the Government of India could have brought such a Bill, whereas under this amendment, on the recommendation of the President any Member can bring it. The only condition is this, namely, that the President after he receives notice of such a motion from any Member will try to take the opinion of the area concerned and then, of course after consulting his Ministry, give his recommendation for moving the Bill or otherwise. But if the original clause had continued, no private Bill could have come; under the new amendment a private Bill can come, with the limitation I have already described. I personally think this is a much better form than the original clause. Probably Shri Thakur Dass Bhargava wants to go much further. He wants that any private Member should have liberty to bring in the House a Bill asking for the change of boundaries. Change of boundaries is a very vital matter and it should not be made so easy that everyday any Member shall bring forward motions for changing the boundaries and the Legislature should discuss that question. It will create unnecessary heat and create friction which I think should be avoided. I think that so far as the language of the amendment is concerned it meets the wishes of Shri Thakur Dass Bhargava. Of course the Member will have to secure the recommendation of the President, and probably if the President feels that the people of an area — the majority of them — are of the opinion that they would be happier if they go to some other State or Province, he would advise the Prime Minister, and probably the Prime

Minister also will agree with him that the motion should be allowed and that Parliament should be allowed to discuss the question. I think that gives full liberty and opportunity to every area which desires a change of boundaries.

There is one aspect of this amendment which is really a very unfortunate aspect, to which Dr. Ambedkar had given vent in his lucid address in the beginning when he said that in this Constitution we have been forced to treat the Indian States on a separate footing from the Provinces. In the First Schedule, the Indian States have been put in Part III while the Provinces have been put in Part I. And here in this Article 3, Part I and Part III are separately treated. Whereas in respect of the States under Part I their Legislatures will only be *consulted*, in respect of the States under Part III their consent will be *required*. Sir, I had given notice of amendments which really sought to do away with this distinction, and I am sure that our learned Dr. Ambedkar also wishes the same thing from the bottom of his heart. There should be no difference between a Province and a State and we all wish that this distinction should disappear. My honourable friend Pandit Kunzru has also argued that there should be no differentiation at least in this matter namely about *consent* and *consultation*. He wants that the States should only be consulted just like the Provinces. He has also pointed out Sections in the Draft Constitution where the States have been asked to fall in line with the Provinces, and I think he has made out a very good case. I am very much in agreement with all that he said. But I personally feel that in this matter our leader, the States Minister, Sardar Patel, feels that it will be a breach of faith if we made provisions in the Constitution without securing the prior agreement of the Indian States also. He has promised us that he will make his efforts to get their consent and before the Bill goes into third reading he will try to have this. We all very much wish him success in his efforts.

Shri H. V. Kamath: On a point of order. Sardar Patel has made no statement on this issue and I do not know if my friend is in order in referring to any statement made by him in private.

Prof. Shibban Lal Saksena: I am only expressing his wish — he has made no statement like that — I only say that he will make his efforts and that before the Bill comes up for third reading he would be able to secure their consent. If he does not, then of course we will have to fall back on our own resources. But by making a provision like this in the Constitution we are making it very difficult for any change afterwards. When it becomes part of the Constitution, a two-third majority will be required for making any change and it will be very difficult. I suggest that some way should be found out for this. If before the third reading is passed this consent is not achieved, then this Article should at least be changeable not by a two-third majority but by a simple majority. Or if the learned Doctor can make the amendment that this part will not be treated as a change in the Constitution, I think our difficulty may be met. The honourable Member who preceded me also said that the people of the States do want that the States should fall in line with the Provinces. It is a matter of fundamental importance that the States should not remain something separate, having separate sovereignty. There should be only one sovereignty and that should be the sovereignty of the Republic; and the States should be part of the one single Sovereign Republic. I therefore hope that the Princes themselves will agree to this patriotic consummation and if they do not, I hope there will be a provision that when the Indian States people come into their own, they will be able to make the required changes. But I hope that the Constitution will not lay down the two-thirds majority. I do hope that if a simple majority is laid down for a change in this clause, when the Indian States people come into power in their Legislatures they will set

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that they are governed on the same lines as the Provinces; but so long as that is not done, we will not be wise in making a breach of faith with those Indian States with whom we have made agreements. Sir, I support the amendment.

Shri L. Krishnaswami Bharathi (Madras : General): Mr.Vice-President, Sir, I fully support Dr. Ambedkar's amendment and the principle underlying it. He said that in the case of Provinces, that is Part I States, mere consultation is enough, in the case of Indian States previous consent is necessary. But the reason that he gave for this distinction is unacceptable and I have no doubt that the House will entirely repudiate that. If I heard him a right, Sir, he said that the States are sovereign. This is a very dangerous doctrine at this time of the day to lay down; two States particularly, Travancore at one stage, and Hyderabad, till recently, claimed that they were Sovereign, and we have all along been repudiating that position and declaring that the States are not at all sovereign in any accepted sense of the word, and that was the fundamental issue at the United Nations Organisation Council at Paris.

Sir, I think it may be his personal view. If we accept his amendment it is not because of that argument. I entirely agree that it is very necessary to make this distinction. We want to go slow, and the States are governed by the Instruments of Accession. We shall certainly get the consent of the people when it is necessary. But to say that the States are sovereign is laying down a dangerous doctrine and if this House accepts this amendment, it is not because of the reason that he advocates but because of other weighty considerations.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I stand here to voice what I think to be the universal feeling of those of us who happen to come from that part of India which hitherto has been called as the Indian States. When we read this amendment which has been proposed to the Draft Constitution by the Drafting Committee, two points emerge. Firstly, that the necessity is there for a provision in the Constitution under which the re-distribution, readjustment or re-alignment of the boundaries of the various units of the Union, may be made whenever needed. Secondly, that in this matter there is some distinction provided in this provision between the Indian States of the present day on the one hand and the Provinces on the other. I may respectfully submit that the distinction in the wordings of the provision contained in provisos (a) and (b) of the amendment has not made us who come from the States any whit happy. On the other hand, we feel a little smaller and we feel as if full justice has not been done. We know that this word "State" has been outrageously interpreted ever since the day of the first Round Table Conference. We have seen that from the days of the Round Table Conference to the declaration of August 8 by Lord Linlithgow in 1940, again from that date to the Cripps Proposals and from the Cripps Proposals to the Cabinet Mission, and even after that during the deliberations of the Negotiating Committee, there has always been the tendency, I should say the definiteness, to interpret the word "State" as NOT the people of the State but "the Ruler" of the State. I am sure that when I voice my protest against this interpretation, I voice the universal feeling of the people of the States. May be that our sacrifices in the struggle for independence have been considered by some to be somewhat smaller in magnitude but that is no reason why we should be deprived of equal rights and opportunities and of the feeling that we are one with the country, that we are not any whit different from the rest of the people of the country. That is why I say we are not happy over this distinction.

It has been argued before us — it is always, so to say, used as a militant argument against us — that because of the Covenants that have been signed

between the Indian Princes and the States Ministry, and also because duly constituted Legislatures are not yet existing in many of the States or States Unions, this distinction in the proviso cannot be avoided. But I think that things are now different. Time was when sovereignty vested in the Princes, but it is a hard fact today that that sovereignty has been transferred to the people in all cases, I should rather say invariably. There might still be an exception or two but that exception too will soon disappear and if that is not going to disappear willingly it shall have to take a lesson from what has happened in Hyderabad. The united will and action of the people of the Indian Union will bring round the recalcitrant elements, if any, as also those who are not going to fall in line with the tendencies of the rest of the country. I repeat that sovereignty today vests in the people and so it vests in this Constituent Assembly. The sovereignty of the Constituent Assembly is unqualified, and undiluted in respect of any and every part of the Indian Union. If there be anyone who objects to that sovereignty or who casts any doubt about that sovereignty, the people of the States are as much behind this august Assembly as the people of the rest of the country for the defence and support of — and are prepared for any sacrifies also if they be needed for the sake of — the sovereignty of the Assembly. There should, therefore, be no difference whatsoever. I suggest that it would have been better that this amendment also might have been allowed to stand over because the matter is of urgent importance, or shall I say, of utmost importance to the people of the Indian States. Even if it be supposed that this amendment has got to be taken up, my suggestion is that is should be taken up at the time when all other controversial points are decided by this Assembly. In case my suggestion does not find favour and the amendment is pursued, then it will be accepted by the representatives of the States in this Assembly with the mental reservations which I have just referred to.

I may conclude by saying that so far as this Assembly is concerned, we have been committed to two definite principles: the principle of unification and of democratization of the entire Union and as such it cannot be contemplated by any provision of the Draft Constitution that there can be some sort of a different treatment between the Provinces and the States. The word "State" has been defined in Article 7 of the Draft Constitution as under:

> "In this Part, unless the context otherwise requires, 'the State' includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India."

The word that has been used is "includes" that means there might be something more which may come within the purview of the word "State". I think the word "Ruler" may be contemplated there. That is why we are not happy over the use of the word "State" in proviso (b) to the amendment proposed by the Drafting Committee itself.

Sir, I respectfully submit that my suggestions and remarks will be taken in the light they are made and will be considered.

Chaudhari Ranbir Singh: (East Punjab : General): *[Mr. President, while supporting Dr. Ambedkar's amendment I cannot help remarking that the amendment undoubtedly provides some freedom to the members of the Central Legislative to move private bills as also some freedom and opportunity to the minorities, based on religion or caste, to have their say in the matter of the formation of any province of their choice. But I want to submit in this connection that the aim of our country being the establishment of a secular State our non-religious Government should follow the rule that all such reservations

* [ ] Translation of Hindustani speech.

[Chaudhari Ranbir Singh]

based on religion or community should be abolished. On the other hand I fear that if this suggestion is accepted, a community which is in a majority in a territory but is in minority in a State will have neither the same weight nor the same opportunities as it had under the previous provisions.]

Shri H. R. Guruv Reddi (Mysore): May I suggest, Sir, that further discussion may be continued tomorrow?

Mr. Vice-President : The House stands adjourned till 10 A. M. on Thursday the 18th November 1948.

The Assembly then adjourned till Ten of the Clock on Thursday, the 18th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 18*th November,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Taking the Pledge and Signing the Register

The following Members took the Pledge and signed the Register:

1. Dr. Jivraj Narayan Mehta (Baroda);
2. Shri Chimanlal Chakkubhai Shah, United States of Kathiawar (Saurashtra).

DRAFT CONSTITUTION—*(contd.)*

Article 3—*(contd.)*

Shri Lokanath Misra (Orissa : General): Sir, before we resume the discussion, I would like to raise a fundamental point of order. It refers to the rights and privileges of Members of this House. With all respect to you, may I beg to submit that by your not allowing me to move my amendment yesterday, I feel that I have been deprived of my rights in moving that amendment which, as a member, I always have. I have consulted the Rules and I see that there is no provision anywhere which can disentitle me from moving that amendment. You had been pleased to disallow that amendment on the ground that my amendment was the same as the amendment moved by Professor K. T. Shah. I do not see how these two amendments can be the same. Professor Shah's amendment is economic while my amendment is political. He anticipates 10 years ahead, my proposition has immediate application, valid and enforceable here now. He wants to break up the 'States', I want to keep the States, describe them completely. Mine is based on the sovereignty of the people which is inherent in them, and not a proviso. Again these two amendments are so very different in the sense that.....

Mr. Vice-President (Dr. H. C. Mookherjee): Is it necessary for you to go into all those arguments?

Shri Lokanath Misra : The number of my amendment is 85, while the number of Professor Shah's amendment is 129.

Mr. Vice-President : This point of order was raised and a decision was given. It is unfortunate that my position compels me to arrive at certain decisions. That particular decision was given and I am not prepared to revise it.

Shri Lokanath Misra : The point is what is the remedy in such cases?

Honourable Members: Order, order.

Mr. Vice-President : Kindly take your seat and oblige me.

Chaudhari Ranbir Singh (East Punjab : General): *[Mr.Vice-President, I pointed out yesterday that according to his amendment a minority, whether based on religion or caste, which is not in majority in any State or any area thereof might undoubtedly secure such alteration in the boundaries of a State as it chooses through the President or the Government of India. But I am afraid the amendment would reduce the chance of success of any community which is in majority in any area but happens to be in minority in that State and

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* [ ] Translation of Hindustani speech.

[Chaudhari Ranbir Singh]

I am afraid it would also reduce the importance of their demand and narrow the opportunity of their having a say in the matter. I hold so because, according to this amendment, the matter would be referred to the State Legislature for consideration and as the people of that area would be in minority in the State although they may be in majority in their own area, it would naturally be recorded that only a few members of the State Legislature desired a change in the boundary of the State. The provision as it stands in the draft lays down that if the majority of the people in any area demand that their area be joined to any other State or to a new State, their demand can be taken into consideration but under this amendment, I am afraid their demand would lose some of its weight, and particularly this would be the case of the people of such areas as have no leader of their own, no press of their own and no other means to make their voice heard. We may take U. P. as a case in instance. When in the last session, the constitution was being discussed, it became quite clear from the discussion held in the Party that U.P. people realise that their province is rather too big. At that time the U. P. people had expressed a fear that their Legislature would be unmanageable as it would have 600 members, if like other provinces, each lakh of the population sent one member to it. While legal and administrative difficulties of this nature are recognised, even then it is said that no area should be given to the province of Delhi or Haryana. Though the people of this area wanted that their region should be joined to Delhi or Haryana yet nothing happened as they had no leader of their own nor any Press of their own. The loyalty of those people of U. P. who had made this demand, was doubted and their voice was stifled to an extent beyond description. A ban was laid on them by the Provincial Congress Committee not to make such a demand, and they were asked not to raise any voice for any alteration in the boundaries of the province.

Therefore, I am afraid, Sir, this amendment will prevent any action for achieving their union on the part of those people and areas that have the same culture, the same language and the same way of life, and whose union is advantageous to the country from legal, administrative and other points of view. I may repeat, Sir, what Shri Thakurdas Bhargava stated yesterday that when a demand was made for forming Haryana into a Province the loyalty of some of those who made this demand was suspected and it was alleged against them that they wanted to form a separate province of Jats. But the truth is that if Haryana had been formed into a Province — and I may point in this connection that under the British regime, when the Round Table Conference was being held, there was the Corbett Scheme for the formation of a new province of Haryana which fell through for want of a spokesman of Haryana while today its formation is being opposed on the alleged ground that the Jats are seeking to have a separate Province of their own — so as I was going to say, the fact would have been that the Jats would be a minority there and even if each community was taken singly into account the Jat community would not be in majority in comparison to the others. If there be any community which has a large population it is that of Harijans — Chamars. So if this province is to be formed at all it would be a province of Chamars. But since they have no Press of their own, they cannot give voice to their demand.

I no doubt support the amendment but at the same time I want that it should be changed so as to include without any doubt the provision that when the Centre consults the provincial legislature the opinion of the majority of the representatives of the territory, which wants to separate itself and join another province, should also be on record and that their recorded opinion should appear before the Central Assembly so that it may know what that particular territory desires.]

Shri H. V. Kamath (C.P. and Berar : General) : Mr. Vice-President, Sir, I hope that the former Indian States will not derive undue encouragement from the doctrine of sovereignty which my honourable friend, Dr. Ambedkar, propounded yesterday. I do not know whether he meant that their status is something like *Imperium in Imperio.* I think it is a dangerous doctrine to propound at this time of the day. If we turn to Part III of the First Schedule, we will find there are two divisions in this Part, Division A and Division B. Many of these States have already merged themselves in the adjacent Indian Provinces. Some have integrated among themselves and formed bigger unions and some are still single States. In terms of the amendment moved by my honourable friend, Dr. Ambedkar, sub-clause (b) of the proposed amendment lays down that where such a proposal affects the boundaries or the name of any State or States for the time being specified in Part III of the First Schedule, it means to say that it refers to all States mentioned in Part III of the First Schedule whether they are single States, whether they are integrated States or whether they are merged States. I wonder whether for little principalities which have merged themselves in the provinces, whether for these States too this doctrine of sovereignty will be extended and whether for the unions of these States the consent of each of the States will have to be obtained. Apart from that, whether the single States should be regarded as sovereign in this regard is to be considered. I can understand if Dr. Ambedkar says that in terms of the Instrument of Accession of these States to the Union of India, so far as this matter is concerned, you will have to obtain their consent, but I trust, Sir, that within the next two or three months at the end of which we will adopt this Constitution, by that time, the hope that Dr. Ambedkar expressed in his speech on the motion for the consideration of the Draft Constitution, that the States will fall in line with the provinces in all respects, will be realized; and I have no doubt that the strenuous efforts of Sardar Patel in this regard will bear fruit, and that by the time we adopt this Constitution, there will be no distinction left between the States and the provinces. In view of this consideration, the amendment of my honourable friend, Pandit Kunzru has come force. If this equal status of the various provinces and States does not come about by the time the Constitution is adopted, then we have got to think why we should attach undue importance to the so-called sovereignty of the States; if at all, it is a nominal sovereignty that the rulers of the States have got in this regard. I am inclined to agree, therefore, with Pandit Kunzru's argument that if the States do become equal in status to the provinces, even then we should not go beyond obtaining the views of the rulers of the States or the legislatures of the States, whatever the case may be. It is understood when we obtain the views of the rulers of the States, or the Rajpramukhs or the legislatures of the States, if their views are in conflict, with the proposal, then that proposal will not come up. So also if the provinces are consulted and if their views are against such a proposal, then that proposal will not be made in the Union Parliament. So, I do not understand why this distinction should be made at all. If you consult a certain authority or a certain Government, it means that if that Government is opposed to the proposal, that proposal will not be made in the Union Parliament. Therefore, it is desirable, that at this time, when Sardar Patel has been telling us for the last so many months that we will abolish all distinctions between the provinces and States and that the provinces shall be brought into line with the States, if you want merely to consult the provinces, just consult the States also, and if you want to get the consent of the States, certainly get the consent of the Provincial Governments also.

Lastly, Sir I would request Dr. Ambedkar to consider this matter from this aspect, namely, in view of the hope expressed in his first speech in the Assembly that the States should be brought into line with the provinces at the earliest possible date and considering the several articles in the Constitution which Pandit Kunzru pointed out yesterday, seeking to abolish such distinctions,

[Shri H. V. Kamath]

whether in this regard also this distinction should not be abolished. I hope, Sir, that at a very early date, we shall administer the *coup de grace*, put an end to the doctrine of sovereignty which has been propounded for the States, so far as this matter is concerned.

Shri R. K. Sidhwa (C.P. & Berar : General): Mr. Vice-President, Sir, several members have stated that this amendment deprives the right of a member to move a Bill to the effect mentioned in this amendment. I am rather surprised at the argument advanced by certain members to this effect. Sir, I yield to none in my desire to protect the privileges and rights of members to move motions or Bills in a legislature. But, while the amendment of Dr. Ambedkar says that the consent of the President should be obtained, it should not be understood that it deprives the member of any right. By way of an illustration, I would say, that every citizen has a right to walk on the highway. Any person can walk as he likes. But, when he walks, he has to be governed by certain elementary rules, so that he may not cause obstruction in the road, or cause accidents or death to others. If a man has to drive a motor car or a vehicle, he has to obtain a license. He is governed by certain elementary rules; if the elementary rules are not followed, there will be chaos. To state that the rights of members have been deprived by this motion of Dr. Ambedkar is incorrect. On the contrary, nowhere is it stated that no member can bring forward a Bill. This is a very important measure and therefore it has been stated that the President should be consulted and his recommendation taken. This is to the benefit and advantage of those who get the opinion of the President, which would mean, the Government of India. They would be armed with very great strength behind them in moving such a proposition.

It has been argued by my honourable friend Mr. Bhargava, yesterday that some of the minor provinces which would like to cut off from the major provinces, would have no right to do so under this amendment. I said yesterday and I repeat today that if a majority does not want a particular territory to be divided, it would be unfair for a minority to encroach upon the rights of the majority. If you want the majority to be ruled over by the minority, then it is autocracy; democracy means rule of the majority. I therefore contend that the amendment that has been proposed is very salutary. It does not deprive any member of his right; on the contrary, I feel that when the recommendation of the President is taken on an important measure like this, his case is greatly strengthened.

Sir, only one point about Pandit Kunzru's amendment. I am really unable to understand why a difference has been made between the States in Part I of the First Schedule, that is provinces, and the States in Part III of the First Schedule. In one case it is stated that the views of the legislature should be obtained and in the other case, *i.e.*, the States, he has stated that the previous consent should be obtained. View means "observations", consent means "unanimity and decision on a matter". You are aware, Sir, that this Constitution was sent to various provinces and the various provinces discussed them in their legislatures and their views have been sent to this House and we have been supplied with copies. That is the right course. No decision has been taken in any legislature. The legislatures in Bihar, Bengal, Bombay, all have discussed the matter and copies of the printed proceedings have been supplied to us. But, consent means consent of the State. I do not agree with those who say that consent means the consent of the Ruler. Consent means consent of the legislature of the State. State does not mean the Ruler. Just as the President does not mean himself personally, but the Government of India, if the Ruler gives consent, he has to take the consent of the legislature of the State. I want to know why in the case of the States, it is stated that consent should be obtained, and I would

like Dr. Ambedkar to enlighten the House as to why this difference has been made between States and Provinces. I feel that in the case of the States, it is very necessary that their views should be obtained rather than consent. I therefore, think, that unless there are valid reasons,— the valid reasons, may be that the Ruler has to be consulted, the States having come into the Union by compromise — no impediment could exist or no compromise question arises. The rights of the people of the States are identical with the rights of the people of the provinces. The zeal of the people of the States is so great that they want to come into the Union straightaway and merge with the various provinces. As we are told that without consent or compromise it is not desirable, we yield to that. But, we expect that on the question of obtaining their opinion, a similar procedure should prevail as in the case of the provinces.

With these observations, I support the amendment strongly and I hope Dr. Ambedkar will clear the point why a differentiation has been made in the case of the States, why he has stated that the views of the legislature should be ascertained in the case of the provinces, whereas in the case of the States he has stated that their previous consent should be obtained.

Mr. Vice-President : Dr. Ambedkar.

An Honourable Member : The question be now put, Sir.

Maulana Hasrat Mohani (United Provinces : Muslim) : Sir, I rise to a point of order. Dr. Ambedkar has only moved an amendment and therefore, I submit, he has not got any right of reply. I have got a ruling of this House in which it is said definitely.....

Shri R. K. Sidhwa : I understand the whole article is under discussion. If the article is under discussion, Dr. Ambedkar has a right of reply.

Maulana Hasrat Mohani : Dr. Ambedkar has already spoken; he has no right to make any further speech.

Mr. Vice-President : Please address the Chair.

Maulana Hasrat Mohani : Sir, I beg to point out that the Ruling says—I am quoting from the printed proceedings of this House — the mover of an amendment has no right of reply. He cannot make a second speech.

Mr. Vice-President : I hold that the Article as well as the amendment are under discussion. Dr. Ambedkar.

The Honourable Shri Ghanshyam Singh Gupta (C.P. & Berar : General) : Sir, the mover has a right of reply.

Mr. Vice-President : That makes my position stronger.

The Honourable Shri Ghanshyam Singh Gupta : What I mean to say, Sir, is this. There are two sets of rules, one, rules of procedure on the legislative side and the second, rules of procedure on the constitutional side. The rules of procedure on the legislative side do say that the mover of an amendment shall have no right to reply. That rule has been purposely omitted in the rules of procedure on our constitutional side. Therefore, I submit that every mover of an amendment has got a right of reply.

Mr. Vice-President : You do not object to Dr. Ambedkar replying?

The Honourable Shri Ghanshyam Singh Gupta : Not only do I not object, but I want to establish this practice that the mover of an amendment has a right of reply, because our rules differ widely from the rules that have been framed for the legislative side.

Mr. Vice-President : We shall decide that later on after Dr. Ambedkar has made his reply.

Shri Lakshminarayan Sahu (Orissa : General) : Sir, there is an amendment in my name.

Mr. Vice-President : Kindly take your seat, Mr. Sahu, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : The amendment moved by my friend Mr. Kunzru is an amendment which carries a great deal of my sympathy but unfortunately in the circumstances in which we stand, I am not in a position to accept the same. The arguments urged by my friend in supporting his amendment was that when I had stated originally in moving my amendment was inconsistent with some of the other clauses or articles contained in the Constitution. He said that the plea I had urged in justification of the distinction between the provinces and the States in the matter of the provisions contained in Article 3 was inconsistent with Articles 226, 230 and 294. Now my submission is this that there is no inconsistency whatever in the plea I have urged in supporting a distinction between the provinces and the States and the various articles to which he has made reference.

With regard to Article 226 which gives power to the Central Legislature to pass legislation on matters included in Provincial list, my submission is this that that authority will be exercised by Parliament by virtue of a Resolution passed by two-third majority of the Upper Legislature. He will realize that the Upper House or Council of States will include representatives of the States as much as the representatives of the Provinces. They will undoubtedly participate in the proceedings of that particular Resolution which seeks to confer power upon Parliament to legislate on the matters included in that Resolution. Consequently it is hardly fair to say that Article 226 automatically usurps the sovereignty of the Indian States. It is really a measure which confers sovereignty by a special resolution passed by the Upper Chamber in which the States are fully represented. That is therefore no illustration of inconsistency at all.

With regard to Article 230, my submission is also the same. My learned friend will remember that the Indian States apart from what they do after the Constitution is passed have at any rate for the present, acceded on the basis of three subjects and one of the subjects is Foreign Affairs. Obviously implementation of the treaty is nothing but an exercise of the power conferred upon the Central Parliament for implementation of the treaty which is the subject matter covered by Foreign Affairs. Therefore that again cannot be said to be an usurpation of their sovereignty rights.

With regard to Article 294 which deals with the extension of the provisions of the protection of minorities in Indian States, that undoubtedly may appear for the moment to be a sort of encroachment of their sovereignty but it is nothing of the kind. It is merely one of the proposals which we shall be making to the Indian States that when they seek admission to the Indian Union they will have to accept Article 294. I might say that this extension was made by the Drafting Committee because the Drafting Committee heard that the Constituent Assemblies of some of the Indian States were making provisions in this regard so diverse and so alarming that the Drafting Committee thought it best to lay down what sort of arrangements for minority protection the Union Government will accept and what it will not accept.

Now, Sir, with regard to this question of differentiation between the Indian States and the Provinces of British India a great lot has been said, and I quite realise that the House is terribly excited over the distinction that the Constitution seeks to make but I should like to tell the House two things. One is this that we are at the present moment bound by the terms of agreement arrived at between the two Negotiating Committees, one appointed by the Indian Constituent Assembly representing the British provinces and the other of representatives nominated by the Indian States for the purpose of arriving at

certain basis for drafting a common constitution which would cover both parts. Now I do not wish to go into the details of the reports made by the Negotiating Committees but if my honourable Friend Pandit Kunzru would refresh his mind by going over the report of that Committee, he will find that here is a distinct provision that nothing in the Negotiating Committee report will be understood to permit the Indian Union to encroach upon the territories of the Indian States. My submission is, if that is an understanding—I do not mean to say a contract or agreement—arrived at between the two parties, at this stage we would do well in respecting that understanding. I would like to point out another thing,—another article in the Constitution to which I am sorry to say my friend Mr. Kunzru has made no reference—that is Article 212 which is a very important article, and I should like to explain what exactly are the possibilities provided by the Indian Draft Constitution with regard to the Indian States. Honourable members must have seen that Article 3 provides for the admission of the Indian States on the basis of such Instrument of Accession as may be executed by the Indian States in favour of the Indian Union. When a State as such is coming into the Indian Union, its position *vis-a-vis* the Central Government and *vis-a-vis* the provinces would and must be regulated by the terms contained in the Instrument of Accession but the Instrument of Accession is not the only method of bringing the Indian States into the Indian Constitution. There is another and a very important article in the Constitution which is 212. 212 provides that any Ruler of an Indian State may transfer the whole of his sovereignty to the Indian Union with respect to his particular State. When the whole of the sovereignty is transferred under the provisions of 212, the territory of that particular ruler becomes so to say the territory of India, with complete sovereignty vested in the Indian Union. Power is then given under Article 212 so that that particular territory the sovereignty over which has been fully transferred by the ruler to the Indian Union can then be governed as a province of India in which case Part II of the Constitution which defines the Constitution of the Indian provinces will automatically apply to that Indian State or it may be administered as a Centrally Administered area; so that the President and the Central Parliament will have the fullest authority to devise any form of administration for that particular territory. Consequently my submission to the House is that there is no necessity—if I may use an expression—to be hysterical over this subject. If we have a little patience I have not the least doubt about it that our Minister for the Indian States, who has done so much to reduce the chaos that existed before we started on the making of our Constitution, will exercise the *de facto* of paramountcy which the Union Government has obtained and reduce the chaos further and bring about an order either by inducing the Indian States to accept the same provisions which we have applied to Indian States or to follow the provision of section 212 and surrender to us complete sovereignty so that the Indian Union may be able to deal with the Indian States in the same way in which it is able to deal with the provinces.

For the present I submit we shall be acting wisely by respecting the agreement which has been arrived at by the two Negotiating Committees and following it up until by further agreement we are in a position to change the basis rather with goodwill, peace and honour to both sides Sir, I oppose the amendment. (*Cheers*).

Mr. Vice-President : I shall now put Amendment No. 150, as modified by the amendment of Pandit H. N. Kunzru to vote. (*Interruptions*). Kindly permit me to conduct the proceedings in the manner I wish it to be conducted.

The Honourable Pandit Govind Ballabh Pant (United Provinces: General) : Sir, I do not know how you are putting the amendment as modified by the amendment of Pandit Kunzru to the vote of the House. I think, first of all you might put the amendment proposed by Pandit Kunzru to vote, and then take the other amendment; to take it up at the outset and combine the two will not be quite in the proper order.

Mr. Vice-President : Please come to the mike.

The Honourable Pandit Govind Ballabh Pant : My submission is this. This amendment of Dr. Ambedkar as modified by the amendment of Dr. Kunzru is being put to vote, and that is exactly what I wish you not to do. I suggest that you might be pleased to put to vote first the amendment of Dr. Kunzru. If it is accepted, then you have to put the modified amendment to vote. If it is rejected, then you have to put the original amendment of Dr. Ambedkar to vote. To combine the two together will be to create some confusion.

Shri H. V. Kamath : What about amendment No. 149 of Prof. K. T. Shah?

Mr. Vice-President : If the amendment of Dr. Ambedkar is carried that will automatically rule out the amendment of Prof. K. T. Shah. That is why I am taking Dr. Ambedkar's amendment, that being the easier course No. 149 seeks for complete substitution.

We shall then first of all vote on the amendment of Pandit Kunzru.

The Honourable Shri Ghanshyam Singh Gupta : Sir, I should like to submit an important point. I think the Honourable Pandit Kunzru has got the right to reply. The ordinary rule is that one who initiates a debate has the right to reply, if it is not curtailed. The Rules of Procedure and Conduct of Business of this House on the legislative side, Rule 111 says that.....

Mr. Vice-President : Does that rule apply here?

The Honourable Shri Ghanshyam Singh Gupta : No, because we have not got any corresponding rule, and the reason is obvious. Here we are dealing with a very important matter in which the mover of an amendment who really brings a substantial proposition before the House may have to say much, after he hears the debate in the House. Therefore, the very fact that in our Rules of Procedure there is no rule corresponding to Rule No. 111 shows very clearly that the mover of the amendment to the Constitution has the right to reply. And that is but natural, because the matter being of very vital importance, the ordinary rules of debate must govern our procedure also. That is my submission.

Shri R. K. Sidhwa : Sir, I feel that the Honourable Pandit Kunzru has no right of reply in connection with his amendment. My reason is that the rule which has been pointed out by my friend Shri Ghanshyam Singh Gupta says that the mover of an amendment has no right of reply. He argues that in our Assembly there is no rule, and so we have to say that the mover has the right to reply. On the contrary, I have not heard in any important legislature or assembly such a right given. When there is no rule for this Assembly, then the rules of the Constituent Assembly (Legislative) should prevail, that being the highest body in our country for legislative purposes. We in this Assembly have no rules to this effect. Therefore, the second highest, *i.e.*, the Legislative Assembly rules should prevail. I feel that this is a very important matter. We must be governed by certain rules. I have not heard of any important legislature or other body or even local bodies where the mover of an amendment has been given the right to reply. I submit, therefore, that the contention and the argument advanced by Mr. Gupta, do not hold water, for the simple reason that we are governed by another and a parallel body which says the mover has no right of reply.

The Honourable Shri Purushottam Das Tandon (United Provinces: General) : Sir, my friend Mr. Sidhwa has been too bold. He has touched a subject of which, you will permit me to say, he has not full knowledge. He has said he does not know of any important legislature which gives the

mover of an amendment the right to reply. I submit, Sir, the United Provinces is a sufficiently important province in the country, and I can tell you, that the Legislative Assembly of the United Provinces has a definite and specific rule to the effect that the mover of an amendment has the right of reply. (Here, hear). This is in regard to bills. The mover of an amendment to a clause in a Bill has the right to reply. Of course, the Minister in charge of the Bill has always the last word. But that is a different matter. The point is that the mover of an amendment to a clause in a bill has been given the right to reply.

I submit here we are dealing with an important matter, as a friend has rightly pointed out. I feel that it would be very proper that the mover of an amendment be given the right to reply to the animadversions that are made on a matter that he has brought before the House. If you choose, you can permit the Minister in charge to have the last word. But I do submit that the mover of the amendment may be permitted to reply to the criticisms that are made against the views that he puts forward.

Shri R. K. Sidhwa : How many provincial legislatures have such a rule?

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. Vice-President, may I make my point a little clearer so that there may be no misunderstanding about it. The Draft Constitution was placed in our hands some time ago. There is a provision in it relating to the redistribution of the territories of States of various kinds. Dr. Ambedkar did not place before the House the provision contained in the Draft Constitution. The proposition to which he invited our attention was an amendment of the original provision, and in moving his proposition he spoke not merely on the merits of his proposal but also on the original proposition contained in the Draft Constitution. It cannot therefore be said that in speaking for the second time he was dealing with something that he had not spoken on originally. He had, it seemed to me, exhausted his right to speak. Nevertheless, he was allowed to reply to the observations made by the other members. I was personally very glad to hear him though I do not agree with all that he said or with much of what he said. But this raises an important question regarding the rights of the members who move amendments, and it is this point that I would like to be cleared up. If a Minister who moves an amendment has the right to reply, may not another member of the House have the same right in similar circumstances?

Shri Ghanshyam Singh Gupta : On a point of order....

Mr. Vice-President : I am going to give my ruling. Under the Rules of the House I am not aware that there is any thing which gives a right to the mover of an amendment to give a reply. If I asked Dr. Ambedkar to give a reply it was because he was asked certain questions and I thought it right and proper and fair that he should be given an opportunity of explaining his position. That is my ruling.

Now I shall put Pandit Kunzru's amendment to the vote.

The question is:

"That in amendment No. 150 of the List of Amendments, in clause (b) of the proviso to article 3, for the words 'the previous consent' the words 'the views' and for the words 'has been' the words 'have been' be substituted respectively."

The motion was negatived.

Mr. Vice-President : The question is:

"That for the existing proviso to article 3, the following proviso be substituted:—

'Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless—

[Mr. Vice-President]

(a) where the proposal contained in the Bill affects the boundaries or name of any State or States for the time being specified in Part I of the First Schedule, the views of the Legislature of the State, or as the case may be, of each of the States both with respect to the proposal to introduce the Bill and with respect to the provisions thereof have been ascertained by the President; and

(b) where such proposal affects the boundaries or name of any State or States for the time being specified in Part III of the First Schedule, the previous consent of the State, or as the case may be, of each of the States to the proposal has been obtained.' "

The motion was adopted.

Mr. Vice-President : It seems to me that the amendment of Prof. K. T. Shah, as well as the next set of amendments up to No. 175 fall through after the acceptance of Dr. Ambedkar's amendment. Then we may pass on to No. 176.

Shri Lakshminarayan Sahu: I would like to move amendment No. 154 which is in may name.

Mr. Vice-President : That is an amendment for substitution to an article which has been dropped altogether. Therefore it cannot be discussed here.

(Amendment No. 176 was not moved.)

We have here an amendment No. 176 (a) from Begum Aizaz Rasul. That is concerned with the National Language. Like others it may be postponed to the proper place.

That finishes Article 3. Is there anyone who wishes to discuss the Article as a whole?

Pandit Lakshmi Kanta Maitra (West Bengal: General): What will be the position if the honourable member is allowed to speak on the Article as a whole? Will Dr. Ambedkar be called upon to reply to that again?

Mr. Vice-President : Most certainly not.

Pandit Lakshmi Kanta Maitra : That whole article has not yet been disposed of and Dr. Ambedkar has so far replied only to the amendment and not to the whole article.

Mr. Vice-President : We shall listen to the honourable member and if he traverses old ground, we shall ask him to desist.

Pandit Lakshmi Kanta Maitra : Therefore Dr. Ambedkar is not entitled to reply as a right?

Mr. Vice-President : No.

Shri M. Ananthasayanam Ayyangar (Madras : General) : That is hypothetical. It does not arise.

Shri Brajeshwar Prasad (Bihar : General) : The Article is designed to serve the following three purposes...

Prof. Shibban Lal Saksena (United Provinces : General) : An important question of procedure is involved. To this Article there have been tabled a number of amendments but you allowed two of them or three of them to be moved and then you took votes upon two of them. There was no chance of moving the other amendments. I think all the amendments should have been allowed to be moved and then votes should have been taken. Otherwise other members will have no occasion to assess them. If they were moved in the House, the House might accepted some of them.

Mr. Vice-President : What are the amendments which have not been moved?

Prof. Shibban Lal Saksena : All the amendments up to No. 174.

Mr. Vice-President : They do not arise. They have been practically rejected on account of the acceptance of Dr. Ambedkar's amendment.

Prof. Shibban Lal Saksena : But they should have been allowed to be moved.

Mr. Vice-President : Why did you not point this out at the proper time?

Prof. Shibban Lal Saksena : It may be kept in view in future.

Mr. Vice-President : That point will be kept in mind.

Shri Brajeshwar Prasad : The Article is designed to serve the following three purposes:

(a) To wipe out the existence of any Province or State;

(b) To strengthen the hands of Sardar Patel;

(c) To create new provinces.

The Article is silent on two fundamental points: *viz.*, (1) the constitutional powers of the new States formed under the provisions of this Article. It has been left to the majority party in the future Parliament of India to determine by the most convenient process of simple majority whether the new State thus formed will be placed in Part I, II, or III of the First Schedule. (2) the conditions under which the Parliament can function under the provisions of this Article. The Parliament has the legal power to unite or break up States without any rhyme or reason. Its hands have not been fettered by any conditions under the provisions of this Article.

Let me illustrate my point. If the majority party in power at the Centre takes into its head to wipe out the Province of Bihar it can easily do so in either of the following two ways open to it under the provisions of this Article, namely:

1. Bihar can be divided into parts and the whole territory placed under the direct jurisdiction and administrative of the Government of India. The plain meaning of the Article is that the Government of India has got the wide power of placing a State, put in either Part I or Part III, in Part II of the First Schedule.

2. Bihar can be merged with Orissa and the new State thus created can be brought entirely under the direct governance of the Central power.

The Government of India must have the power to take over the administration of a State into its own hand, if it does not govern well or in accord with the spirit of the Constitution. Similarly it must have the authority to punish a recalcitrant State which under the stress of centrifugal forces tends to drift away from the Centre.

As stated above the second purpose for which the Article has been incorporated is to strengthen the hands of Sardar Patel. The constitutional position of the Native States is still in the melting pot.

Pandit Hirday Nath Kunzru : Indian States and not Native States.

Shri Brajeshwar Prasad : It would be far better to call them Native States than Indian States. The native states have always been the weakest link in the chain of Indian Nationalism. Special care and attention must be bestowed in tackling these problems. The present craze for constituent assemblies in the native states must be checked. State armies must be wiped out. The native states must be brought under the direction, supervision and control of the Ministry of States and the Government of India. It will be desirable to place them in Part II of the First Schedule. The line of least resistance was adopted in amalgamating a large number of States into unions. The formation of these unions will encourage fissiparous tendencies.

[Shri Brajeshwar Prasad]

It lies within the power of Sardar Patel to bring all these territories under the direct government of the central authority. To obviate the danger of any misconception in the minds of the State people that we are tending towards absolutism and despotism I suggest the appointment of a Deputy Minister of States from the ranks of those who are representing the States people in this Constituent Assembly.

The third purpose for which this Article has been conceived is to make some room for those who are the great champions of Linguistic Provinces. I am opposed to this Article to the extent it tends to serve this purpose.

A great fuss is being made that it is undemocratic to oppose the cherished ambitions, hopes and aspirations of a considerable section of the community. But a thing must be intrinsically sound to carry weight. No standard of sound democracy can justify the great wrong that has been done to this country by the tragic partition of August 15,1947……

Mr. Vice-President : This has nothing to do with the Article under consideration. The Honourable Member is getting into stride and five minutes have already gone.

Shri Brajeshwar Prasad : Sir, I said at the beginning that I wanted ten minutes and I have taken only five minutes so far. I am however entirely in your hands.

Mr. Vice-President : I am equally in your hands.

Shri Brajeshwar Prasad : Nationalism is more dear to me than Democracy. It is a very poor conception of democracy to say that it is very necessary to secure approval and obtain consent at all levels of administration. Such a notion will only lead to utter chaos and anarchy.....

Shri Rohini Kumar Chaudhari (Assam: General) : On a point of order, Sir, I do not know under what provision you have allowed this sort of speech being made after the amendments have been carried in the House. I have seen no precedent where an amended resolution or amended provision of a Bill can be allowed to come up before the House and discussion allowed. If everybody here is allowed to write a criticism of the debate on this clause and inflict that speech on the House there will be no end to it. There is no procedure which allows a speech like this after the amendments have been carried out.

Mr. Vice-President : I may point out that there is a precedent for it when Mr. Kamath spoke at the end of the second Article and there was no objection at that time from any quarter.

Shri Brajeshwar Prasad: The essence of democracy is that people must aspire after higher goals of political life. Any demand of the people which does not fulfil this essential pre-requisite is not democratic.

Mr. Vice-President : This is wasting the time of the House.

The question is:

"That Article 3, as amended, form part of the Constitution."

Sardar Hukum Singh (East Punjab : Sikh): The Article cannot be put to the House unless those amendments that have been held over are decided upon.

Mr. Vice-President : They have been left, as they are not in order after the acceptance by the House of the amendment of Dr. Ambedkar.

Shri Raj Bahadur (United State of Matsya): Sir, I invite your attention to the fact that the Honourable Member Mr. Brajeshwar Prasad has used the words "Native State" in respect of the Indian States. I seriously object to the use of the word "Native" and would request you to rule out such words.

An Honourable Member : They should be expunged from the proceedings.

Mr. Vice-President : That question does not arise.

The question is:

"That Article 3, as amended, form part of the Constitution."

The motion was adopted.

Article 4

Shri M. Ananthasayanam Ayyangar : Sir, may I suggest a point of procedure just to avoid unnecessary waste of time. You have called out article No. 4 and you have asked Mr. Naziruddin Ahmad to move his amendment. All members who wish to take part in the discussion may be allowed to speak on the article also along with the amendments, so that there need not be a repetition once again when you put the article as a whole. If all the amendments are exhausted there may not be any speeches again. It is open to you and there is nothing to prevent you from giving such a ruling as this.

Mr. Vice-President : I accept your suggestion.

Mr. Naziruddin Ahmad (Bengal: Muslim): Sir, I beg to move:

"That the words 'of this Constitution' be deleted in clause (1) of article 4 and throughout the Draft Constitution wherever the said words occur in the same context; and a new definition (bb) be inserted in clause (1) of article 303:—

'(bb) "article" means article of the Constitution'."

In the ordinary legislation of this country whenever we refer to a section we never repeat the word "section" of this Act. So far as this Constitution is concerned we have used the word 'article' instead of 'section', and the wording of the Act is due to the fact that it is implied under the General Clauses Act. I submit that we should apply a similar device in this Constitution by the adoption of a new definition (bb). I have suggested in the amendment that the words are absolutely unnecessary. Whenever we refer to an article it is obvious that an article of this Constitution is always meant. I would point out respectfully that in this draft Constitution, in many places, the Article number has been given without the addition of the words 'of this Constitution'. Even in this very Article in one place we have these words 'of this Constitution' and in another place, these words are not there. We may uniformly omit these words in all places.

Mr. Vice-President : The Honourable Member may move all his amendments to Article 4, one after the other, up to amendment No. 181 on the Order Paper, and be as brief as possible.

Mr. Naziruddin Ahmad : I shall be brief, Sir. But it must be noted that this amendment of mine will dispose of no less than 68 amendments. With reference to the Schedule we have omitted the repetition of the words 'of this Constitution'. Whenever you refer to the Schedule you refer to the Schedule Number and do not say, such and such Schedule 'of this Constitution'. This is because of a special definition which has been provided in the Draft Constitution itself. I draw the attention of the House to Article 303, clause (1), item (v): ' "Schedule" means a Schedule to this Constitution'. This is a very necessary provision. On this analogy, 'Article' should also mean an Article of this Constitution. I submit that the amendment I have suggested is similar to item (v) of 303 (1).

Now I shall move the other amendments, 178 to 181.

I move:

"That in clause (1) of Article 4, for the words 'article 2 or article 3', the words and figures 'article 2 or 3' be substituted".

[Mr. Naziruddin Ahmad]

I submit that the word 'article' need not be repeated as it is done in clause (1) and, in fact in many places in this Draft Constitution.

Then I move:

"That in clause (1) of article 4, for the words and figures 'article 2 or article 3', the word and figure' article 3' be substituted."

I move next:

"That in clause (1) of article 4, for the words 'shall contain such provisions for', the words 'shall also provide for' be substituted."

This is a very simple amendment.

I now move my last amendment to this article:

"That in clause (2) of article 4, for the words 'for the purposes of', the words 'within the meaning of' be substituted."

This is only a verbal amendment.

Mr. Vice-President : The subsequent amendments may now be moved one after the other. Amendment No. 182 in the name of Prof. Shibbanlal Saksena is the next in order. Though it is for the deletion of clause (2) and hence cannot be allowed, I would give him an opportunity to speak on this Article.

Discussion will henceforth be on the concerned Article as a whole.

Prof. Shibban Lal Saksena : I am not moving 182 for the omission of clause (2).

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Sir, I move amendment No. 184:

"That in clause (2) of article 4, for the words 'for the purposes of article 304', the words 'under article 304' be substituted."

The retention of the existing words will lead to some sort of complication. Therefore we should substitute the words 'under article 304.'

Shri H. V. Kamath : Mr. Vice-President, by your leave, I shall make a very brief observation on amendment No. 177 of my Honourable friend Mr. Naziruddin Ahmad. Before you call upon Dr. Ambedkar to reply, may I request him, in case he holds that amendment No. 177 should be rejected, to give us some reasons for his opposition and not merely repeat the trite formula 'I oppose this amendment'? Because, apart from the arguments advanced by my friend the mover of the amendment and the instances quoted by him, I have gone through the constitutions of the Commonwealth of Australia, the Union of South Africa, the Swiss Confederation and the German Reich which have all been supplied to us in a booklet of the Assembly Secretariat, called Constitutional Precedents—Second Series. I have gone through them all very closely and I find that this sort of repetition of the phrase "of this Constitution" does not find a place in anyone of them.

After all, to my mind, brevity is the soul or essence of a Constitution, and we should try to avoid overburdening the Constitution with redundant and unnecessary words or phrases or expressions. I find in our draft Constitution this expression 'of this Constitution' repeated *ad nauseam*. I think the amendment is a reasonable and harmless one. We should pay some attention to the language of the articles of the Constitution. In conclusion I repeat my request to Dr. Ambedkar not to merely repeat the formula 'I oppose', but give reasons as to why he does so.

Shri Rohini Kumar Chaudhari : I have come to the rostrum to honour my friend Mr. Naziruddin Ahmad by opposing this amendment. (*Laughter*). I regret that he has wasted some of our time and I curse myself that I cannot resist the temptation to oppose him and waste some time of the House also by doing so. I would be failing in my duty if I do not record here the appreciation

which we must give to that noble band of thieves which operates in the East Indian Railways between Howrah and Delhi. We must give our thanks to this noble gang that is responsible for stealing only the brief-bag containing various other answers of our friend Mr. Naziruddin and, but for that fortunate fact, there would have thousands more of amendments of the kind we are dealing with now. I would warn my friend Prof. Shah that this noble gang may be operating between Bombay and Delhi as well.

Mr. Vice-President : I am afraid this has no bearing upon the matter on hand.

Shri Rohini Kumar Chaudhari : The point is that if there had been no theft of his brief from his compartment when he was coming this time to attend the Assembly there would have been more such amendments which could be easily left to the draftsmen and not brought before the House. I will also say, Sir, that in dealing with amendments from Mr. Naziruddin Ahmad, although some of them are very good ones, because they are tabled in his name, they are often opposed without any comment. Therefore I would request my honourable Friend, if he comes forward with very serious amendments, to table an amendment to change his name also, so that his amendments may be seriously considered.

Prof. Shibban Lal Saksena : Sir, I gave notice of an amendment that clause (2) of article 4 be omitted but you have ruled it out of order. I think that an amendment for the deletion of a clause can be moved, but your ruling is there and I bow to it. I feel that we must bear in mind one particular aspect of Article 4 to which I would especially wish to draw the attention of Dr. Ambedkar. In this article Dr. Ambedkar has provided an easy method for changing boundaries because in clause (2) he says that "no such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 304." In article 304 it is laid down that any change in the Constitution must be passed by a two-thirds majority, whereas here it is provided that so far as any law referred to in article 2 or 3 of the Constitution is concerned, it shall not be deemed to be an amendment of the Constitution. Sir, I personally feel that changes in boundaries of States are matters of much consequence and they should not be allowed to be carried out by a mere majority, because the boundaries of a State should be stable and it should not be possible for every majority in Parliament when it comes to power to alter boundaries which this clause (2) will enable them to do. I think this is a wrong provision, but still I think that in the first ten or twenty years it may probably be allowed. My honourable Friend, Dr. Pattabhi Sitaramayya and others have given notice of an amendment to that effect, but they are not moving it. I do not want to move any amendment but I do feel that it should not be made easy for boundaries of States to be changed by a mere majority. If we allow this clause to remain as at present, we should at least set a time limit. This should not be made a permanent part of the Constitution. I hope Dr. Ambedkar will say how he feels about this very important matter.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I did not think that this was a matter which required any speech from me, but as Mr. Kamath has expressed a desire that I must not merely negative the amendment but should offer an explanation as to why I was not prepared to accept the amendments suggested by my honourable Friend, Mr. Naziruddin Ahmad, I have come here to make my explanation. I think it will be agreed that in matters of this sort, which relate merely to phraseology and not to the substance of the article itself, it cannot be stated that it is a matter of principle at all. It is a mere matter of precedent how different Constitutions have used language in matters which are analogous. My submission is that in the language we have used we are absolutely covered by precedent with

[The Honourable Dr. B. R. Ambedkar]

regard to the question of repeating the phrase "of this constitution". My friend, Mr. Kamath, stated that he has examined several constitutions such as that of Australia and of some other countries but did not find this phrase "of this Constitution" contained therein. I am sorry that he did not extend his researches to the Irish Constitution. If he had, he would have found that the phraseology used in the Draft Constitution is the same as is used in the Irish Constitution. For his reference, I would like to draw his attention to Article 19 of the Irish Constitution, article 27, sub-clause (4), article 32 and article 46, sub-clause (5) where he will find that, wherever the word "article" occurs, it followed by the phrase "of this Constitution".

I may also point out to Mr. Kamath that in this respect we have also followed the phraseology contained in the Government of India Act, 1935. I am sorry I have not had the time to examine all the sections of the Government of India Act but I have just, fortunately for myself, found one section which is 142-A where similar phraseology has been used. So far therefore as the first part of the amendment moved by my honourable friend, Mr. Naziruddin, is concerned, my submission is that we have not acted in any eccentric manner but that whatever phraseology we have used is covered by the Constitutions of other countries as well.

With regard to his second amendment that we should not repeat the word "article" after the word "or" and that we should merely say, "article 2 or 3", my submission is again the same. There again we have followed well-known Constitutions and if my friend will examine them, he will find that similar phraseology occurs elsewhere also. For his information, I would ask him to refer to section 69, sub-clause (3), of the Government of India Act. The word used there is "paragraph". It says, "paragraph (d) or paragraph (e)". It does not merely say, "paragraph (d) or (e)". Therefore this can hardly be a matter of debate or a matter of difference of opinion so far as the principle is concerned. It is a mere matter of precedent and the question to be asked is: Have we done something which is not covered by precedent? And my submission is this, that whatever we have done in the matter of using phraseology is covered by precedent and therefore, there can be no objection to any clause as it stands in the draft.

Mr. Naziruddin Ahmad : Then what about clause (2) of Article 4? I think there should be a short notice amendment to use the words "of this Constitution" in clause (2) in order to make the draft clear.

Mr. Vice-President : We cannot create a bad precedent by admitting a short notice amendment.

The Honourable Dr. B. R. Ambedkar : I cannot accept it, Sir.

Mr. Vice-President : In that case, I shall put the amendments to vote one by one.

Mr. Vice-President : The question is:

"That the words 'of this Constitution' be deleted in clause (1) of article 4 and throughout the Draft Constitution wherever the said words occur in the same context; and a new definition (bb) be inserted in clause (1) of article 303:—

'(bb) "article" means article of this Constitution';"

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 4, for the words and figures 'article 2 or article 3', the words and figures 'article 2 or 3' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 4, for the words and figures 'article 2 or article 3', the word and figure 'article 2' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 4, for the words 'shall contain such provisions for', the words 'shall also provide for' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (2) of article 4, for the words 'for the purposes of', the words 'within the meaning of' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (2) of article 4, for the words 'for the purposes of article 304', the words 'under article 304' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That clause (1) of Article 4 stand part of the Constitution."

The motion was adopted.

Mr. Vice-President : The question is:

"That clause (2) of Article 4 stand part of the Constitution."

The motion was adopted.

Mr. Vice-President : That finishes Article 4. The next few amendments, No. 185 and the following are concerned with the national flag, national language, script and so on. I understand that there is an attempt made to arrive at some sort of understanding and I think that it would be to the interest of the House and it will save the time of the House, if we postpone their consideration for the present and pass on immediately to Part IV.

Seth Govind Das (C. P. & Berar: General): Mr. Vice-President, Sir, before you proceed to take up Part IV, I want to bring it to your notice that these new clauses deal with the national flag, the national language, script and the name of the country and so on. I have no objection if they are held over for future, but at the same time, I want your ruling on one point and that is that whenever these questions are taken up in future, suppose when the question of the language of Parliament comes in Article 99, then we should be allowed to raise the question of national language, national script and other matters also which are included in the various amendments which are not being moved now. Let it not be ruled out at that time because Article 99 deals only with the language of the Parliament and similar things these amendments cannot be moved then. Therefore, Sir, I want this to go on the record as a ruling that in future these questions can be raised and if certain things are decided by the House, then those articles may be inserted in the Constitution wherever it is thought proper to be inserted. (*Interruption*).

The Honourable Shri K. Santhanam (Madras: General): Mr.Vice President, Sir, on a point of procedure, I submit, it is for the Chair to regulate what sections will be taken and in what order. Therefore, I do not think there should be any debate on your ruling that Part IV should be taken up first. It is not for any honourable member to choose and say where and when an article is to be put in. However, you have asked that Part IV be taken up now and therefore, I suggest we ought to proceed with the articles of that part, without considering any other interpolation.

Mr. Vice-President : I am an unworthy occupier of this chair and I do not think that anybody here need have any apprehension about these amendments being ruled out. We are here so far as I understand it to arrive at common understanding and to pass a Constitution that will be to the benefit of us all. Here every opportunity, I think, should be given to every Member of the House to place his point of view before the rest of the members and I can assure Seth Govind Das that if I am here, I shall see that no injustice is done to any one.

Shri Damodar Swarup Seth (United Provinces : General): I wish to move amendment No. 187 which has nothing to do with the language controversy going on. My amendment reads like this. (The Honourable Member began to read his amendment).

Mr. Vice-President : I rule your amendment is inappropriate here. We pass on to Part IV.

Shri R. K. Sidhwa : Before you proceed to Part IV, I have got to offer my personal explanation. The Honourable Shri Purshottam Das Tandon level led a charge against me when I mentioned that no important legislature has got a rule giving the right of reply to the mover of an amendment. I have got a ruling from the Bombay Provincial Legislative Assembly which reads:

"That mover of a motion, but not the mover of an amendment ....."

[Interruption].

Mr. Vice-President : We are not concerned with that just now and I must ask the honourable member to sit down.

Now, we go on to Part IV. I rule amendments 831 and 832 out of order. The first part of amendment No. 833, I rule out of order. Mr. Mahboob Ali Baig, if you like, you may move the second part.

Shri M. Ananthasayanam Ayyangar : Sir, I think this amendment is not in its proper place. This amendment reads: "or alternatively. That the following proviso be added to Article 35:— etc." This should come in after amendment No. 835.

Mr. Vice-President : You can bring in your objection later on.

Mahboob Ali Baig Sahib Bahadur : Sir, I will move this after amendment No. 835. May I be allowed to speak generally on Part IV, Sir?

Mr. Vice-President : No, you can speak only with reference to this particular amendment.

Shri Lokanath Misra : Mr. Vice-President, Sir, we are not prepared to discuss part IV. From Part I to Part IV this is a big jump. We came prepared only for the discussion of Parts II and III. I think we should be given time and the discussion should be adjourned.

Shri M. Ananthasayanam Ayyangar : Sir, Part IV consists of Directive Principles. There are not very many amendments to this Part. Part II relates to Citizenship and Part III relates to Fundamental Rights which are of a justiciable nature. A number of amendments have been tabled to these two Parts. To bring about agreement as to which amendments have to be moved and which need not be moved, takes some time. So far as Part IV is concerned, it does not take much time. They are only Directive Principles, they have been already considered and we have spent long hours over them when we discussed these principles. In these circumstances, I feel nobody need complain of want of notice so far as Part IV is concerned.

Mr. Vice-President : Did you get the lists of amendments?

Honourable Members : Yes.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, the general practice is that discussion proceeds *seriatim* but instead we are now jumping from Part I to Part IV. We have several amendments to Parts II and III. We are prepared to move them but we are not prepared with the amendments to Part IV. We are taken aback and that is our difficulty. We have several amendments to Part IV.

Mr. Vice-President : You will agree that we should expedite the business of the House.

Shri Amiyo Kumar Ghosh : But there is a method, Sir.

Mr. Vice-President : You will also agree that it is in the interests of the House that before we come here those who have sent in amendments have an opportunity of discussing them with the members of the Drafting Committee and arriving at some kind of understanding. This is in the larger interests of the House and with the idea of saving the time of the House. These are the factors which have induced me to give further time for the consideration of Parts II and III. I believe, on the whole I have the support of the House.

Shri Amiyo Kumar Ghosh : May I request you, Sir, to adjourn the House now and again sit after the recess. It is about twelve o'clock; we may sit again at three o'clock.

Mr. Vice-President : I shall consider that.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Sir, that we are going to discuss Part IV should have been intimated to the members yesterday. We have not even brought the amendments to be moved to Part IV. We are taken unawares. It is very difficulty for us to move the amendments, because we are not prepared with the amendments. It would be unfair for those of us who are not ready, Sir.

Shri M. Ananthasayanam Ayyangar: Sir, it is strange that Mr. Karimuddin should have raised a complaint like this. Every member is generally ready with his amendments.

B. Pocker Sahib Bahadur (Madras: Muslim): Sir, it is very unfair on the part of Mr. Ananthasayanam Ayyangar to say that each and every member should be ready with his amendments to any of the 300 or 400 Articles of this Constitution. It is impossible for anybody to be so, Sir. I submit, Sir, it is unfair to pass over these important Parts and go to a Part which many of us did not expect at all would be taken up. It is only proper that we go in order, or this House should be adjourned till such time as is convenient. *(Interruptions).*

Shri Lokanath Misra : Sir, so much is happening behind the scenes that we are not only puzzled, we cannot even run the race. This is unworthy of us. On banded knees, I would ask you to save us from such situations and help us to undertake our task with regularity and proper direction. If such things are to happen and things go on behind us, kindly us to get out and then let things go on as they like. I would but request you, Sir, to give us time to prepare and think about these amendments. We should be in a position to do justice to our constituents, to the great goal and to ourselves and to this august House.

Shri Mahavir Tyagi (United Provinces: General): Sir, may I request the party leaders and the Whips of the majority party to be considerate and take a charitable view? I understand that it is rather unfortunate and unfair that for the failure of the Congress Party to decide issues among themselves, they should force the whole House to accommodate them in this manner. I feel that either the House should be adjourned or some such business be taken up as the members are prepared to discuss.

Mr. Vice-President : If the majority of members are unable to proceed with the business of the House, I am fully prepared to adjourn the House now. We may meet tomorrow at Ten of the Clock.

Honourable Members : Yes.

Mr. Vice-President : The House stands adjourned till 10 a.m. tomorrow.

B. Pocker Sahib Bahadur : May I know, Sir, what Part will be considered.

Mr. Vice-President : We shall deal with Part IV first tomorrow. If there is time, we will proceed further.

The Assembly then adjourned till Ten of the Clock on Friday, the 19th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 19*th November,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—*(contd.)*

Article 28

Mr. Vice-President (Dr. H. C. Mookherjee): Shall we resume discussion of Part IV? If I remember a right, amendment numbers 831, 832 and 833 were disposed of yesterday. We start with amendment No. 834.

Shri Brajeshwar Prasad (Bihar: General): Sir, before we go clause by clause, I would suggest that the House may be given an opportunity to discuss the general provisions of State Policy.

Mr. Vice-President : I am afraid it cannot be done.

(Amendment numbers 834, 835 and 836 were not moved.)

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, the amendment which I am moving is:

"That in the heading under Part IV the word 'Directive' be deleted."

Sir, it would have been much better if the amendment of Mr. Kamath could be taken up along with the amendment that I have moved. The provisions of Directive Principles which have been embodied in Part IV are very important as they relate to uniform civil code and to economic pattern and very many Fundamental matters. Directive Principles mean that they will not be binding on the State; in any case, they would not be enforceable in a court of law. My submission is that, if this Constitution is not laying down these principles for being enforced in a court of law, or if they are not binding on the State, they are meaningless. I would like to draw the attention of the Honourable Members to what Dr. Ambedkar has said in his own book, that these principles should be embodied in the Constitution as Fundamental Rights and that a scheme embodying these principles should be brought into operation within ten years. I find, Sir, in Article 31 the economic pattern of the country has been based on very vague generalisations. It is very necessary that the word 'Directive' should be deleted, and as Mr. Kamath has suggested, they should be made Fundamental Principles of State Policy. Therefore, my submission is that the word 'Directive' is unnecessary and meaningless. The provisions under this Chapter become only platitudes or pious wishes and it has been very rightly stated by Dr. Ambedkar that they are more or less only Instrument of Instructions. If they are really an Instrument of Instructions, why should they find a place in the Fundamental Principles to be embodied in the Constitution, I do not understand. Dr. Ambedkar has further said in his speech that we do not want to lay down certain principles because it would be open to the coming generations to have their own pattern—I do not want to read the whole speech. It is only stated in Article 31 that there will be improvement in economic, social and other things. What is the use of laying down generalisations as has been stated in Article 31? Therefore, I submit, it is

[Kazi Syed Karimuddin]

no use treating these principles as Directive; such a course will not prove to be to the good of the people and to the State. It is very necessary that all these principles should be made mandatory in order that a scheme embodying these principles could be brought into operation within ten years.

Sir, I move my amendment, and reading my amendment with Mr. Kamath's amendment, it should be "Fundamental Rights".

Shri M. Ananthasayanam Ayyangar : (Madras: General): Sir, if my friend Mr. Karimuddin follows Mr. Kamath, as Mr. Kamath has withdrawn his amendment.....

Shri H. V. Kamath (C. P. & Berar: General): I have not yet withdrawn my amendment, Sir.

Shri M. Ananthasayanam Ayyangar : He is not moving, I think. The point is this. It is not as if Mr. Karimuddin does not want this Chapter. He only wants the word 'Directive'.....

Kazi Syed Karimuddin : I want the Chapter; only, I want the word "Directive" to be deleted from the heading.

Shri M. Ananthasayanam Ayyangar: He does not want the Chapter to be deleted.

Shri H. V. Kamath : On a point of order, Sir, did we not agree yesterday that all the amendments to an article will be moved first, and then the article will be taken up for discussion?

Mr. Vice-President : Mr. Kamath is correct. I am sorry that this matter escaped my attention altogether. Discussion will be taken up later on.

The next amendment stands in the name of Mr. Kamath, No. 838.

Are you moving amendment No. 838?

Shri H. V. Kamath : Mr. Vice-President, I move:

"That in the heading under Part IV for the word 'Directive', the word 'Fundamental' be substituted."

Sir, while moving this amendment for the consideration of my Honourable friend Dr. Ambedkar and of the House, I would like to advance only two reasons for the same. Firstly, we have been told that Parts III and IV of the Draft Constitution embody certain rights, Part III being justiciable rights and Part IV being non-justiciable rights. But both are looked upon or regarded as rights which are fundamental. I derive support from the report of the Honourable Sardar Patel. I am reading from the reports of the Committees Second Series, from July to August, 1947. Copies of this booklet were supplied to all the Members of the House in March of this year. I am reading from the Honourable Sardar Vallabhbhai Patel's Report which was presented to the Assembly on the 30th August 1947. There he says—and it is addressed to the President of the Constituent Assembly—in para. 2:

"We have come to the conclusion."

'We' means the Advisory Committee on the subject of Fundamental Rights.

"We have come to the conclusion that in addition to these Fundamental Rights, the Constitution should include certain directives of state policy which though not cognizable in any court of law, should be regarded as fundamental in the governance of the country."

And on page 48 of this booklet which contains the reports of the committee of which the Honourable Sardar Patel was the Chairman, they have given the title to these very rights which are now embodied in Part IV — "Fundamental Principles of Governance". I should like to know from Dr. Ambedkar and the gentlemen of the Drafting Committee, why they have made a departure from the title given by Sardar Patel to these rights. That Committee gave the title of 'Fundamental Principles of Governance', but here the Drafting Committee have changed the title to 'Directive Principles of State Policy'. There is some

force in Syed Karimuddin's argument that both these are fundamental—the justiciable and the non-justiciable rights; and in requesting the House to consider my amendment I would only say this in conclusion, that if this amendment is thrown out, you will be throwing out not my amendment, but the recommendation of Sardar Vallabhbhai Patel.

Mr. Vice-President : Amendment No. 839—not moved. Is amendment No. 840 going to be moved?

Shri M. Ananthasayanam Ayyangar : No. 840 is the same as No. 838.

Mr. Vice-President : Then, it seems to me that the amendments considered so far deal with the heading of this chapter. Members who wish to speak on this may please do so now.

Shri M. Ananthasayanam Ayyangar : Sir, the object of differentiating certain rights as justiciable and non-justiciable rights is well-known. Those here are non-justiciable rights as has been laid down in paragraph 29. They shall not be enforceable in a court of law. Mr. Karimuddin wants that these also should be justiciable rights. I do not know if Mr. Karimuddin is a lawyer. But let him consider one or two suggestions. In Article 26 it is said that the State should within a period of ten years introduce free compulsory education. Take this as an instance. Let us assume that the State does not do so, then can any court of law enforce it? Against whom? In case a decree is granted by a court of law, who will carry it out? If the Government does not carry it out, can the High Court or the Supreme Court enforce it? Is it open to the Supreme Court to change such a government? With its authority, can it by an officer of the Court, an Amin or a Sheriff, imprison all the Ministers, and bring into existence a new set of ministers? In the nature of things, these are only directives and cannot be justiciable rights at all. So there is no purpose in removing the word directive. These are principles which the Government must keep in mind, whatever government may be in power, and they must be carried out. We have incorporated them in the Constitution itself because we attach importance to them. But to classify them as Fundamental Rights as in Part III would be to take away the difference between the one set and the other, and making all the rights justiciable, which, in the nature of things, is impossible. There is no use being carried away by sentiments. We must be practical. We cannot go on introducing various provisions here which any Government, if it is indifferent to public opinion, can ignore. It is not a court that can enforce these provisions or rights. It is the public opinion and the strength of public opinion that is behind a demand that can enforce these provisions. Once in four years elections will take place, and then it is open to the electorate not to send the very same persons who are in different to public opinion. That is the real sanction, and not the sanction of any court of law.

Therefore, this amendment is mis-conceived, and I would request the House not to accept it.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, I support the amendment to drop the word "directive". It is not only the heading but the entire chapter which is misconceived. Only the other day Dr. Ambedkar enunciated a very important principle by way of reply to Prof. Shah's amendment (No. 98) by which he wanted to introduce certain words into the Constitution to which Dr. Ambedkar said that pious expressions are not proper things to be embodied in a Constitution. He said, "the Constitution is a mere mechanism and no political principles or policies need or should be incorporated in it." He further said that "political principles or policies should be dictated by the people themselves through their votes and posterity should never be fettered by an announcement of policy or principle." These are important words coming

[Mr. Naziruddin Ahmad]

from such a high authority. I submit these pious principles should not be enunciated unless there is the backing of the law and they are also made justiciable. Dr. Ambedkar further said that to introduce pious expressions would be "taking away from the people their right to vote" and these things would be "superfluous". I submit that if you introduce pious principles without making them justiciable, it will be something like resolutions made on New Year's day which are broken on the 2nd of January. I submit that these pious wishes are so obvious that they need not be enunciated at all. If you state them you might also say that people should get up from their bed early and be kind to their neighbours, and so forth. Sir, I submit these are not proper things to be embodied in the Constitution and the amendment of Syed Karimuddin should be accepted.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Sir, I am sorry I cannot accept either of the two amendments: Mr. Kamath's amendment is really incorporated in the phraseology as it now stands; the word "Fundamental" occurs, as Mr. Kamath will find, in the very first Article of this part. Therefore his object that these principles should be treated as fundamental is already achieved by the wording of this Article.

With regard to the word "directive" I think it is necessary and important that the word should be retained because it is to be understood that in enacting this part of the constitution the Constituent Assembly, as I said, is giving certain directions to the future legislature and the future executive to show in what manner they are to exercise the legislative and the executive power which they will have. If the word "directive" is omitted I am afraid the intention of the Constituent Assembly in enacting this part will fail in its purpose. Surely, as some have said, it is not the intention to introduce in this part these principles as mere pious declarations. It is the intention of this Assembly that in future both the legislature and the executive should not merely pay lip service to these principles enacted in this part, but that they should be made the basis of all executive and legislative action that may be taken hereafter in the matter of the governance of the country. I therefore submit that both the words "fundamental" and "directive" are necessary and should be retained.

Mr. Vice-President : The question is:

"That in the heading under Part IV, the word 'Directive' be deleted."

The motion was negatived.

Shri H. V. Kamath : Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : We shall now take up amendment Nos. 841 to 846. The movers will kindly move them one after another and then there will be a discussion.

Amendment No. 841 is a negative one and therefore it is ruled out of order.

Since the Member concerned is not here, Amendment No. 842 falls through.

Amendment Nos. 843 to 846—Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I shall be moving Nos. 843, 844 and 846. I shall not be moving No. 845.

Sir, I move:

"That in article 28, the words 'unless the context otherwise requires' be omitted."

"That in article 28, for the word 'requires', the word 'indicates' be substituted."

"That in article 28, for the words 'the State', the word 'State' be substituted."

With regard to my first amendment for the deletion of the words "unless the context otherwise requires", I beg only to submit this. There are only a

few articles in this part. This article attempts to define "the State" to mean States in Part III of the Constitution. I submit that there is here no difficulty or any confusion. If we say "unless the context otherwise requires" it would indicate that the meaning that has been definitely given by article 28 to the expression "the State" is subject to fluctuation in accordance with the context, that is in accordance with the individual approach of each man. This would create an uncertainty and a very needless uncertainty in the context. I would submit that the word should be precisely defined. In fact the word "State" has been defined in so many places to mean so many things that there has already been a sufficient amount of confusion in the understanding of the word "State" and the introduction of these words—"unless the context otherwise requires" would introduce further complications. I therefore submit that these words should be removed and, if necessary, doubts in any particular context should be met by a proper change in draftsmanship.

The second amendment is merely verbal, and I want to change the word 'requires' into the word 'indicates'. I do not wish to say anything further in this connection.

With regard to the third amendment, that for the words "the State" the word "State" be substituted, I have to submit that the word 'State' is the proper word in the context. If we define the expression as "the State" it will lead to difficulties in the clauses in which this expression occurs. I should submit that the word "State" should be more appropriate and I shall attempt to show why.

The Australian precedent which has been cited in another connection by the Honourable Dr. Ambedkar, I think, should better be discarded. The reason why I submit this amendment is this: That in the context the expression "the State" appears in Articles 29 to 40. In those contexts the words "the State" are inappropriate. It should be remembered that the words "the State" are attempted to be defined as "State" within the meaning of Part III of the Constitution. It is enough for me to point out that there are more States than one included in Part III of the Constitution. Therefore the words "the State" in the following Articles— 29 to 40—would be inappropriate. If there is one individual State which we want to indicate, the words "the State" would be proper in the context. But we have in mind not one State or "the State" but several States in the different contexts. So I have suggested the expression "State". It is for this reason that I want to remove the word "the" which to my mind is absolutely unnecessary. It is a grammatical article which need have no place in the definition itself. If we tie down the definition to the word "the" the words become inseparable and therefore a forced use of this expression in the succeeding articles becomes absolutely compulsory. Therefore, this will need careful consideration.

The Honourable Dr. B. R. Ambedkar : Sir, I oppose the amendments of my friend, Mr. Naziruddin Ahmad. The words "the State" in Article 28 have been used deliberately. In this Constitution, the word "State" has been used in two different senses. It is used as the collective entity, either representing the Centre or the Province, both of which in certain parts of the Constitution are spoken of as "State". But the word used there is in a collective sense. Here the words "the State" are used both in a collective sense as well as in the distributive sense. If my friend were to refer to part III, which begins with Article 7 of the Constitution, he will see in what sense the word "State" is used. In this part, unless the context otherwise requires, "the State" includes the Government and the Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India. So that, so far as the Directive Principles are concerned, even a village *panchayat* or a district or local board

[The Honourable Dr. B. R. Ambedkar]

would be a State also. In order to distinguish the sense in which we have used the word we have thought it desirable to speak of 'State' and also 'the State'. Honourable Members will find this distinction also made in Article 12 of the Constitution. There we say:

"No title shall be conferred by the State;

No citizen of India shall accept any title from any foreign State."

There we do not use the words "the State"; but in the first part we use the words 'the State'. We do not want any of the authorities, either of the Centre or of the provinces, to confer any title upon any individual. That being the distinction, the House will realise that the retention of the words 'the State' in Article 28 is in consonance with the practice we have adopted in drafting this Constitution.

Mr. Vice-President : I shall now put these three amendments to vote. The question is:

"That in article 28, the words 'unless the context otherwise requires' be omitted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in article 28, for the word 'requires' the word 'indicates' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in article 28, for the words 'the State', the word 'State' be substituted."

The amendment was negatived.

Mr. Vice-President : I shall put Article 28 to vote. The question is:

"That article 28 form part of the Constitution."

The motion was adopted.

Article 28 was added to the Constitution.

Article 29

Mr. Vice-President : The House will now take up Article 29 for discussion. Amendment No. 847 for the deletion of Article 29 is out of order.

Professor K. T. Shah may now move his amendment.

Prof. K. T. Shah (Bihar : General): Mr. Vice-President, I beg to move:

"That for article 29, the following be substituted:

'29. The provisions contained in this Part shall be treated as the obligations of the State towards the citizens, shall be enforceable in such manner and by such authority as may be deemed appropriate in or under the respective law relating to each such obligation. It shall be the duty of the State to apply these principles in making the necessary and appropriate laws.' "

In submitting this motion to the House, I would in the first place express my sense of keen appreciation of Dr. Ambedkar's remarks made a few minutes ago, wherein he not only insisted that we should not leave such matters as mere pious principles, but also should make them a sort of directive, which, though the word mandatory is not used, may amount to that state. I was a little unhappy when, on a previous occasion, the learned Doctor was pleased to say that the Constitution was not a document for embodying such principles. It seems that the course of conversion operates very swiftly with a brain so alert, an intelligence so sharp a mind so open to new ideas as that of the learned Doctor. That is why I am very happy to express my sense of keen appreciation for the rapid conversion that he has exhibited today in agreeing to find

a place for enforcement in the Constitution. In fact he has gone a step further: and, though he does not admit their place in the name or designation of the Constitution, he has been pleased to make that as a positive thing, the enforcement of such principles, fundamentals as they are called, in the Constitution.

Having expressed this, Sir, I hope that Dr. Ambedkar would also see the advisability of accepting my amendment that this article 29, which I regard as an insult to the entire Constitution, be substituted by what I have suggested.

Sir, article 29 makes it quite clear, in the opening phrase, that no court can enforce these ideals. That is to say, the only authority that we are going to set up in the Constitution, to give effect to whatever hopes and aspirations, ambitions and desires, we may have in making these laws and in laying down this Constitution, is from the very start exempted, exonerated and excused from giving effect to one of the most cardinal, important and creative Chapters of this Constitution. We have suffered from a hundred years of exploitation; we have suffered from a hundred years of denial and exclusion. Now that we are coming into our own, we insist—I hope the House will join me in the intention—that the night of darkness shall pass away and that from the very first rising of the sun on the horizon, even from the first glimpse of dawn, we shall makeup our minds, we shall gird up our loins to give effect to all the hopes that our leaders in the past have expressed.

Sir, certainly it would not be in consonance with such a hope as this to lay down, at the very outset, in a Chapter like this, that no court shall be entitled to give effect to our hopes and aspirations. If I may say so without any offence, it is a kind of provision which encourages the Court and also the Executive not to worry about whatever is said in the Constitution, but to act only at their own convenience and on their practicability, and go on with it. It looks to me like a cheque on a bank payable when able, *viz.*, only if the resources of the Bank permit. I do not think that any authority connected with the drafting of this Constitution would approve of such a provision being incorporated in the Negotiable Instruments Act authorising the making of a cheque payable when able. It seems to me that unless my amendment is accepted, this Chapter would be nothing else, as it stands, but a mere expression of some vague desire on the part of the framers that, if and when circumstances permit, conditions allow, we may do this or that or the third thing. There is nothing mandatory,—with all deference to those who have spoken in support of the retention of the word 'directive' in the title of the Chapter—or compulsory, included in the various provisions. Sir, in the absence of any such mandatory direction to those who may have the governance of the country hereafter, it is quite possible that all these things for which we have been hoping and striving all these years may never come to pass, at any rate within our lifetime. This is an attitude which no lover of the people would care to justify, would dare to justify.

I suggest, Sir, that many things look impracticable until they are tried, and become practicable if they are tried. Nothing in practice is practicable until it is tried. Take even the elementary right to education which every civilised Government is now undertaking to provide for the children of the nation. Even this right to compulsory primary education has been provided for in such a clumsy, half-hearted and hesitating manner that one wonders whether the framers of this Draft were at all anxious that the curse of ignorance that has rested upon us all these years should be removed at all. The provision made here just permits the State, even within the period of ten years, only to "endeavour" to give effect to this aspiration. Even there it is not compulsory, even such an elementary right as the right to primary education for every child in the nation is not mandatory. As such I feel Sir, that unless some change is made, unless you make these preemptory obligations mandatory duties of the State, the State or the constituent parts of it may not at all attend to these duties of the State. These are most elementary duties in my opinion, duties

[Prof. K. T. Shah]

which are most primary duties, if I may say so, most sacred that no one should try to insult this House by suggesting these are not practicable.

Then, Sir about the absence of any sanctions as another learned friend put it. An old English writer—it was Walter Bagehot, I think,—who wrote in a classic chapter of his book on the English Constitution that Parliament votes every year large sums of money to the Crown, but there is no sanction or authority for anybody to compel the Crown that the sums shall be spent. I agree. There is no constitutional authority laid down so far in the unwritten Constitution of England that the sums voted shall be spent. But does anyone think that because there is no legal sanction, any Minister in his senses would for a moment suggest that these sums need not be spent, or that the so-called prerogatives of the King like dismissing any officer of the State would be used now arbitrarily as they had been in the past?

I mention this illustration, Sir, merely to emphasis the fact that it rests with you whether or not you are resolved that no longer shall the curses that have rested upon us so far will continue, for a moment longer than we can afford or than we can possibly help. It is no use putting down these mere pious hopes and aspirations or general directives that may be enforced if and when circumstances permit. It is possible that circumstances will never permit until you compel them to permit you. That is why from the very start I would lay down that these shall be mandatory, compulsory obligations of the State, which every citizen will have the right to demand should be fulfilled, and if today you think of no sanction, if today you can devise no means by which they can be enforced except perhaps by the periodic general elections when Ministries may be turned out for not fulfilling these duties, then it is up to you to devise something. Where there is a will—to repeat the trite old saying—there will always be a way. It is either bankruptcy of intelligence if you say that you cannot find a way; or it is really a genuine lack of desire to make good what we have been hoping and striving for.

There may be many in this House—I am sure Dr. Ambedkar is the foremost amongst them—who will remember that when the late Gopal Krishna Gokhale first brought forward the Bill for compulsory primary education, the then officials of the then Government of India gave all sorts of reasons why such a step was simply impracticable. One of the arguments was that an expenditure of three crores spread over ten years, that is rupees thirty lakhs a year, was too heavy a burden for the Government of India's finances at that time to bear. But within four years of that, however, they were wasting not three crores but more than thirty crores over the war in which we had no concern and about which we were not consulted.

That was the case when we were powerless, when we were helpless in our own country. That position, however, is changed today, and I hope the Ministers of the new Government of India, the Ministers of the Government of free India, the legislators of the Republican India, will not now rest content with merely expressing these pious wishes. If there are difficulties in the way, they are only meant to be overcome. These difficulties should not be allowed to stop our progress at any cost. Hence it is that I would like to invite the House to agree with me that the provisions contained in this Chapter must be regarded as the Obligations of the State towards every citizen and *vice versa*. Every citizen should have the right to compel the State to enforce these obligations by whatever means may be found practicable and effective, and conversely the State also should have the right to see that every citizen fulfils his obligations to the State.

There is only one more word that I have to say and I have done. My Honourable Friend Mr. Rohini Kumar Chaudhary expressed his keen sense of

appreciation yesterday for the gang of thieves who are operating between Calcutta and Delhi, and he warned me they may do so also between Bombay and Delhi. I am deeply grateful for the solicitude that he had expressed on my account as well as on that of another Honourable Member. I can only assure him that his apprehensions are groundless, because I am not in the habit of just travelling in a railway compartment with my amendments in an attache case under my head. I carry them mostly in my own head. Unless therefore the thieves take a highly expert surgeon with them, who can remove the amendments from my brain; they cannot take away my amendments; and the House will not be spared—certainly Mr. Rohini Kumar Chaudhary will not be spared—the necessity of going through these amendments. May I also add without any offence that the loss of these amendments is not the loss of Mr. Naziruddin Ahmad or myself. It is the loss of the House, because those of us who have come here and put forward these amendments are not doing them for fun or mischief, but have put brains and intelligence into them.

Mr. Naziruddin Ahmad : I wish to speak on my amendment, though I do not wish to move it.

Shri M. Ananthasayanam Ayyangar : A similar amendment for substituting the words "every State" for the words "the State" was moved and negatived.

Mr. Naziruddin Ahmad : It depends upon the context.

Mr. Vice-President : If you insist on speaking, you may do so.

Mr. Naziruddin Ahmad : I won't take more than one minute, Sir.

Shri M. Ananthasayanam Ayyangar : I submit that the President has always got the right to disallow in order to avoid frivolous amendments. This matter has already been considered by the House. It has been disposed of and except for the purpose of taking the time of the House, there seems to be nothing else behind it. I submit that there is no substance in Mr. Naziruddin Ahmad's amendment, and if it is still being persisted, then I want your ruling.

Mr. Naziruddin Ahmad : I very much regret that my attempt to explain is being regarded as dilatory.

Mr. Vice-President : I suggest you proceed without paying any attention to what he says.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in article 29, for the words 'the State', the words 'every State' be substituted."

I fully admit the force of the remarks of Mr. Ananthasayanam Ayyangar, but I am compelled to place before the House a certain difficulty. Article 29 says that it shall be the duty of the State to apply these principles in making laws. Then the State means one State, but here there are a large number of States.

The Honourable Shri K. Santhanam (Madras: General): May I ask the honourable member to see Article 29 where "the State" has been defined as having the same meaning as in Part III of this Constitution. Therefore in article 29 also the State is the same thing.

Mr. Naziruddin Ahmad : I was pointing out the difficulty in the draft. We have already been placed in a straight jacket by accepting the words "the State" and the straight jacket is pursuing us in the clauses. I should say the words "every State" are more appropriate. The fact that we have accepted the definition does not prevent us to avoid the absurdities in the following articles. I submit that the expression in the context is absolutely absurd.

Prof. Shibban Lal Saksena (United Provinces: General): I am not moving my amendment, but I want to speak on the Article as a whole. Sir, this Article has been the subject of many amendments and the purpose of most of the amendments is that this Chapter should have some sort of binding force. I

[Prof. Shibban Lal Saksena]

have also given notice of an amendment which is No. 861 in the printed list and which says that "After a period of ten years, these directive principles of State Policy shall become the Fundamental Rights of the People and shall been forceable by any Court". After a very careful consideration of the various Articles in this Chapter, I feel that it will not be proper to lay down such a tall order. In fact, the Drafting Committee has itself laid down a period of ten years for compulsory Education up to fourteen years of age and three years for separation of Executive from Judiciary and some such other things. So something has been done in this direction. What I really want is that these Directive Principles in this Chapter should not merely remain a pious wish. My Honourable friend, Prof. K. T. Shah, also wanted that these fundamental principles should guide the state in their legislation. I wish to assure him that the very fact that this chapter forms part of the Constitution, gives such a guarantee and it will surely be open to every legislature to point out when an Act is brought before the Assembly that it is in conflict with the principles laid down in this Chapter. So, the mere fact that they are being included in the Constitution shows that every legislature will be bound to respect these directive Principles in the Constitution and therefore, any act which offends the directive principles shall be *ultra vires*. Although every citizen will not be able to go to a court of law for enforcement of these principles, yet the President of every Assembly will be within his rights to rule out any Bill and say that this Bill can not be moved, because it is against the fundamental directive principles of the Constitution itself. I therefore, think that this chapter is not merely a chapter of pious wishes, but a chapter containing great principles. A perusal of article 31 will show that very many high principles have been enunciated here and I hope Prof. Shah will also admit that if these principles are acted upon in both the Union Legislature and the State Legislatures, we shall have a State which will almost be acting as if these principles were fundamental rights which were enforceable by a court of law. Of course, every individual will not be able to go to a court of law to get their enforcement, but every legislature will be able to rule out any Bill which offends these principles. I therefore, think that my amendment which was intended to put a sort of time limit to make the State go on with their implementation at a rapid pace, so that all these directive principles may become incorporated in Acts of Parliament in ten years, may create difficulties by its rigid time limit. I hope my purpose will be realized by the fact that this part shall be a part of the Constitution and every legislature will be required to respect the principles contained in it and to see that no Act is passed which is against the principles enunciated in this chapter. I therefore, think that those friends who term this Article merely as a chapter of pious wishes are not correct. This is a very important chapter which lays down the principles which will govern the policy of the State and which, therefore, will ensure to the people of the country the realisation of the great ideals laid down in the preamble. I therefore hope that the opposition which my friend, Prof. Shah, has voiced through his amendment will not be pressed. Sir, I therefore support this Article.

Mr. Hussain Imam (Bihar: Muslim): May I ask if there will be no discussion on these amendments except by the movers?

Mr. Vice-President : If you had caught my eye, I would have given you an opportunity.

Mr. Hussain Imam : I thought that after the amendments have been disposed of by putting them to vote, discussion would be allowed.

Mr. Vice-President : No. It was decided yesterday that honourable members can speak both upon the amendments as well as on the article.

Mr. Hussain Imam : By a discussion other members of the House will also get an opportunity.

Mr. Vice-President : Why did you not stand up?

The question is:

"That for article 29, the following be substituted:

'29. The provisions contained in this Part shall be treated as the obligations of the State towards the citizens, shall be enforceable in such manner and such authority as may be deemed appropriate in or under the respective law relating to each such obligation. It shall be the duty of the State to apply these principles in making the necessary and appropriate laws.' "

The motion was negatived.

Mr. Vice-President : The question is:

"That in article 29, for the words 'the State', the words 'every State' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That Article 29 stand part of the Constitution."

The motion was adopted.

Article 29 was added to the Constitution.

Mahboob Ali Baig Sahib Bahadur (Madras: Muslim): Sir, I said that I will speak on this Article. I stood up, Sir.

Mr. Vice-President : I did not see you. Can you not speak on Article 30?

Mahboob Ali Baig Sahib Bahadur : Article 29 is the most important Article.

Mr. Vice-President : I am unable to go back. I shall give you an opportunity to speak on Article 30.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, may I know the correct procedure? When a clause is put to the House, is it not the right of a member to speak either in favour of the clause or against it?

Mr. Vice-President : Certainly.

Shri Amiyo Kumar Ghosh : But, I think, Sir, no such opportunity has been given in this case. The amendments were put to vote. When the clause was put to vote, several gentlemen stood up to oppose the entire clause. I think the correct procedure is, after the amendments have been put to the vote and they are lost, the entire clause is put to the House. At that time a member has got the right to oppose it or support it; he may speak on the entire clause. That is the correct procedure.

Shri M. Ananthasayanam Ayyangar : Sir, yesterday you gave a ruling and it was accepted that instead of having two different sets of discussions, there may be one discussion once for all both on the amendments and the Article, and that after the amendments are put to the vote, the Article may be put to the vote without any further discussion, and declared carried or otherwise. That was your ruling and we have been following it. Separate discussions, one for the amendments and another for the Articles are not necessary.

Shri Amiyo Kumar Ghosh : That was not a ruling for the entire Constitution; that was specially meant for Article 3. I think Mr. Ayyangar is laying down a new principle.

Mr. Vice-President : That was the procedure adopted. *(Interruption.)* Kindly allow me to speak. Shall I proceed? (To B. Pocker Sahib Bahadur, who stood up) Do you want to say anything? I am prepared to make way in your favour.

B. Pocker Sahib Bahadur : Sir, I am very sorry to note that Mr. Ananthasayanam Ayyangar is taking upon himself very frequently the duties of the Vice-President himself. *(Interruption).*

Mr. Vice-President : Order, order.

B. Pocker Sahib Bahadur : Sir, he has been giving instruction to the Chair every now and then. In fact.....*(Interruption)*.

Some Honourable Members : Withdraw.

B. Pocker Sahib Bahadur : I am quoting a fact, Sir. Just now.....

Shri K. Hanumanthaiya (Mysore): Sir, he is casting as persion on an honourable member.

Mr. Vice-President : Order, order.

B. Pocker Sahib Bahadur : I am just quoting facts. He has said just now that the ruling of the Chair is that the questions on the amendments and also questions opposing the clause itself should all be discussed together. As a matter of fact, when Mr. Mahboob Ali Baig came here and wanted to speak against the clause itself, he was told by the Chair that the proper time for him would be when the clause itself is before the House after the amendments are over. Whatever it is, it is for the Chair to decide the question.

Shri Biswanath Das (Orissa: General): Sir, on a point of order. It is to be very much regretted that an honourable member jumps up and goes on the draw the attention of the Vice-President and the honourable members of the House to certain questions which should have been noticed by the Vice-President himself. The very fact that the Vice-President has not taken notice of these goes to show that either he himself desired them or they were his rulings. It is none of the business of the Honourable member to point out to this House or to the Honourable the Vice-President the way in which he should have acted himself. I am sorry to say that it is a reflection on the Chair. Therefore, I would request you, Sir, not to tolerate, much less to allow such disturbances of the proceedings.

Mr. Vice-President : May I suggest that Mr. Ayyangar merely repeated a procedure which had been adopted with the approval of the House in conducting our proceedings. I do not consider that Mr. Ayyangar was wrong in reminding us about what had passed yesterday. I deeply regret that these things should not have been appreciated in the proper spirit by the honourable member speaking. I want that we should work together in complete harmony and that no misunderstanding should spring up. We must come here with clear and open hearts, prepared to trust one another. In democracy it always happens that the minority can only put forward its point of view and try to persuade the majority, and submit to the ruling of the majority. That is what democracy means as I understand it in my poor and in adequate way. Surely, the business of the House can hardly be conducted unless certain rules are followed and followed faithfully, in the spirit and not merely in the letter. As I have already said, if Mr. Mahboob Ali Baig had caught my eye, I would have surely given him an opportunity to speak. In fact, if honourable members will only scrutinise the way in which I have tried to conduct the proceedings of the House, they will find that I have gone out of my way in affording facilities to certain groups which at the present moment feel that they were not sufficiently strong to make their voices heard. That has been my policy, and in that policy, I am grateful that the majority community has lent me its unstinted support. In these circumstances. I would beg you, Mr. Pocker Sahib, to kindly resume your seat and allow me to conduct the business of the House in the way that seems best to me and not to cast reflections, which pain me, either on Mr. Ayyangar who is there to help us, or on myself, who am trying my very best so far as my poor abilities go, to conduct the business to the entire satisfaction of the House. Will you please resume your seat?

B. Pocker Sahib Bahadur : Sir, I do not want to say anything more except to thank you for the kindly way in which you have expressed your anxiety to give every facility to people who are in the minority. I must also apologise to you if you take it that I in any way meant any reflection on you

or on Mr. Ayyangar. I only wanted to bring to your notice how we misunderstood what you stated and that we thought that we had further opportunities after all the amendments are discussed. I am thankful to you, Sir, for the way in which, you have expressed your anxiety to give opportunities to the minority to express themselves.

Mr. Vice-President : May I make one suggestion? When such a kind of understanding has been given by me namely that an honourable member will speak on a particular occasion, for the time being, he may occupy a front seat so that he may not experience much difficulty in catching my eye. Let me assure the House once again that I shall do whatever lies in my power to give every possible facility to the members of the minority communities.

Mr. Hussain Imam : May I ask for elucidation of your ruling, as I was not present when this ruling was given. Therefore I want for the guidance of the House that it should be elucidated first. My own impression was that by your ruling what was meant was that members who were speaking on amendments should not claim a second right of speech on the main motion itself. It was never meant that as soon as an amendment is moved and the mover of the article says whether he accepts or rejects it, the discussion ends. That only means that the discussion as far as that particular amendment is concerned is ended, but the discussion on the main article can continue and in that connection I will remind you that I stood up as soon as Dr. Ambedkar had intimated his opinion on the amendments and therefore I was perfectly justified—and I had caught your eye—to express my opinion on the article. It is on that restricted line that I want your ruling as to whether my understanding is correct or I am wrong.

Mr. Vice-President : Let me explain it. First of all the amendments are moved and members moving them can also speak on the clause as a whole. Then there is opportunity given to Honourable members to discuss the amendments as well as the article itself and after that Dr. Ambedkar replies and that closes the discussion. That is how I have tried to understand it and that will be the procedure which will be followed hereafter.

Mr. Hussain Imam : It is not clear whether the discussion on the general article itself closes. The discussion on the amendment can close, not the general discussion.

Shri Ram Sahai [United State of Gwalior-Indore-Malwa (Madhya Bharat)]: *[Mr. President, I would like to submit that many members do not like to express their views on the amendments that are moved here and to participate in the debate on them, because they consider them to be meaningless, useless and devoid of any utility. If it continues, the result would be no discussion on the original clause. Therefore, I submit, Sir, that since members do not like to speak on the many amendments that are being moved here, they simple fall through. In my opinion, it is much more necessary to speak on the original clause and consider it fully.

Therefore I would submit that the amendments that are useless and are moved for no reason should be ruled out and we should devote ourselves to a fuller consideration of the original clause.]

Mr. Mohamed Ismail Sahib (Madras: Muslim): Mr. Vice-President, Sir, while I appreciate the consideration you have been showing to the House, to the various sections of the House, I want this point to be made clear. Now suppose several amendments are being moved to a certain article. Then those amendments are discussed and afterwards replied to by the Honourable Mover of the Resolution. I want to know whether after the reply is given by the Honourable Mover I mean the Law Minister, the article is not before the House for general discussion. Because the amendments may relate only to certain parts of the article. There may be other parts on which honourable members

* [ ] Translation of Hindustani speech.

[Mr. Mohamed Ismail Sahib]

might have something to say. Therefore I request you to make it clear whether after all the amendments are disposed or, Members have got a right to speak on the article itself.

Mr. Vice-President : What I said was this; suppose there are four amendments. They are moved one after another. Between the moving of the amendments and the reply by the Chairman of the Drafting Committee there is an interval during which other members may participate in the discussion and they might talk not only about the amendments but about the clause itself.

Mr. Mohamed Ismail Sahib : My point is after the amendments are disposed of by the House, whether the members have not got the right to speak on the article as amended or not as amended—that is what I want to know. The members should in fairness be given an opportunity to speak on the article.

Mr. Vice-President : They have that opportunity.

Shri M. Ananthasayanam Ayyangar : Mr. Vice-President, that opportunity means once again after Dr. Ambedkar has spoken?

Mr. Vice-President : No.

Shri M. Ananthasayanam Ayyangar : It is rather strange that persons who have been in Legislatures should make this objection. We know that the Resolutions are first moved and then all amendments are asked to be moved on the particular clause or resolution. Then both the resolution and the amendments are open for discussion. Thereafter the amendments are put to vote and then the clause is put to vote. There is no scope for a general discussion once again on the clause. There should be no departure from this practice which is followed in the Dominion Legislature.

Mr. Vice-President : I do not think it is profitable to continue the discussion. The ruling is final. I shall not permit further discussion.

Nawab Muhammad Ismail Khan (United Provinces : Muslim): After the amendment has been moved.....

Mr. Vice-President : I am afraid you fail to appreciate the fact that the decision has been given. I am not prepared to reopen the discussion.

Nawab Muhammad Ismail Khan : In order to facilitate discussion, after amendments have been moved the Chair may please say that the article is now open to general discussion so that people may rise to speak on the motion.

Article 30

Mr. Vice-President : The motion before the House is:

"That article 30 form part of the Constitution."

The first amendment stands in the name of Mr. Naziruddin Ahmad. This is out of order. The second amendment is in the name of Mr. Damodar Swarup Seth.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move that for article 30, the following be substituted:

"30. The State shall endeavour to promote the welfare, prosperity and progress of the people by establishing and maintaining democratic socialist order and for the purpose the State shall direct its policy towards securing:—

(a) the transfer to public ownership of important means of communication, credit and exchange, mineral resources and the resources of natural power and such other large economic enterprise as are matured for socialisation;

(b) the municipalisation of public utilities;

(c) the encouragement of the organisation of agriculture, credit and industries on co-operative basis."

Sir, my reason for submitting this amendment is that I feel that as it is worded, the article is somewhat indefinite and vague, and does not convey any clear indication as to the economic nature of the social order to be established. We all know that the society in which we now live is of a capitalistic order or character and in this society we see the exploiter and exploited classes both existing side by side; and the exploiting class is naturally the top-dog and the exploited class the under-dog. In such a society we clearly see that the real welfare of the masses, of the toiling millions can neither be secured nor protected, unless the society is made clear of the exploiter class, and that can only be possible when we establish a socialist democratic order, and transfer to public ownership the "important means of production, communication, credit and exchange, mineral resources and the resources of natural power and such other large economic enterprise as are matured for socialisation;" bring about the "municipalisation of public utilities"; and "the encouragement of the organisation of agriculture, credit and industries on co-operative basis".

So far as I know, the Indian National Congress in its selection manifesto promised the transfer of ownership of the means of public utilities, communication, production, credit, exchange, to the ownership of the public. The Economic Committee's Report of the Congress also accepts this principle. Without that, we are not going to establish a social democratic order in which the real welfare of the masses will be secured. Let it not be said of us, Sir, that we made promises simply to break them, as was done by the British Government. Here we talk too much about democracy and the welfare of the masses. But in practice, we see actually that there is little or no democracy. The will of the ruler even to-day prevails, in the form of the law. If we really want that something should be done for the masses, and their real welfare secured, that can only be possible through a socialist, democratic order. And if we are really keen to establish such an order, we should lay down in this Constitution that the order which we are going to establish will be a socialist democratic or democratic socialist one. The wording should be as clear as possible so that its meaning may not be changed when it is in the interest of the ruling classes to do so.

With these words, Sir, I submit this amendment for the acceptance of this Assembly.

Mr. Vice-President : No. 864 is the same as No. 863. Therefore it need not be moved. Is 867 moved?

Mr. Naziruddin Ahmad: Yes, Sir, I move it. I beg to move:

"That in article 30, the words 'strive to' be omitted."

Sir, the article in the passage runs to this effect—"The State shall strive to promote the welfare of the people....." I want the removal of the words 'strive to'. The article, would then read as follows:

"The State shall promote the welfare of the people."

I submit, Sir, that by providing that these rights shall not be justiciable, this Article has been sufficiently weakened, and by again putting in the words "shall strive" to promote the welfare of the people, the Article has been still further weakened. I submit, Sir, that if these rights are to be introduced in the Constitution, they should be that the "State shall promote the welfare of the people", not merely "strive to". As it is, it would mean that the State is not expected actually, to promote the welfare of the people, but merely strive to do so. In this weakened and diluted form, I think it is worse than useless. Therefore, in order to give the article some practical meaning, these words must be removed.

Shri H. V. Kamath : Sir, I move amendment No. 870:

"That in article 30, the word "The" occurring before the words "national life" be deleted."

[Shri H. V. Kamath]

Sir, I was rather reluctant to give notice of this amendment, considering that it is of a minor character; but somehow the word 'the' jarred upon my ear and ultimately I decided to send it on. I am not so presumptuous as to advise my learned friend Dr. Ambedkar or his wise colleagues of the Drafting Committee on matters of language; but I do hope that in this case, the word 'the' jars upon their ears as much as it does on mine, and it does violence to the laws of euphony. So I request him to omit it.

The Honourable Dr. B. R. Ambedkar : I accept the amendment.

Mr. Vice-President : No. 871 not moved.

Now the Article is open for general discussion.

Mahboob Ali Baig Sahib Bahadur : Sir, I oppose the amendment of Mr. Damodar Swarup Seth (No. 863) as well as the Article itself. The reason is that the amendment seeks to import into the constitution certain principles of a particular political school. My view is that in a constitution no principles of any school of political thought should be incorporated. For the same reason I oppose the clause itself. This question of directive principles of State policy should be examined from two points of view, *i.e.*, democratic principles and secondly, the enforceability of those principles. With regard to the first you know that in the Preamble to the constitution a democratic republic or State is envisaged, and in the body of the constitution the type of democracy which is commonly known as parliamentary democracy is embodied. And the executive which is embodied in the constitution is what is termed the parliamentary executive which comes into power on account of the majority of a particular party having been elected by the electorate; and that executive is responsible to the people through the Parliament. Therefore inevitably there would be parties in the country which seek election to Parliament and these political parties have different and distinctive ideas, ideals, ideologies, programmes and principles. Sometimes they are so different that they can be called antagonistic; and it is on the merits of the principles or programmes of particular parties that the electorates return them to Parliament. And when a particular party is returned in a majority and is entitled to form the government, the people and the electorate have got a right to expect the implementation of those programmes and principles. That is what is meant by parliamentary democracy as it obtains in the United Kingdom, and which is sought to be embodied in this constitution. Now the question is, in these circumstances what is the place of these directive principles of State policy in a parliamentary democracy in which the executive is made responsible to the Parliament which has been chosen and elected on the merits of the principles and programmes laid down by that party? That is the most important thing for us to consider. We can conceive of cases where a party which has been returned by the people has programmes and principles which are contrary to the principles that are laid down in this Chapter. Recently we know that in the British Parliament the Conservatives have moved for the rejection of nationalisation of iron and steel. Yesterday we heard there was an uproar. It was no doubt defeated by the Labour Government; that clearly shows that political parties have different and distinctive programmes, and it is on their merits that the parties are returned to Parliament in a parliamentary democracy. When that is the position envisaged and embodied in this constitution, what is the place of these directive principles in it? They have obviously no place. It is undemocratic opposed to parliamentary democracy which is envisaged here. Is it the purpose of these principles to bind and tie down the political parties in the country to a certain programme and principles laid down in this? Surely not; that will not be democracy or at least democracy of the type that is envisaged here, *viz.*, parliamentary democracy which is responsible to the people. Therefore my submission is that these principles are out of place and contrary to the principles of parliamentary democracy.

Now it is said by some that these are fundamental principles. I submit that if they are so fundamental they cannot be changed except by amendment of the constitution, and should not find a place here. In fact my own view of fundamental rights is that they are those which are taken away from the purview of the legislature; they are so fundamental that no party can veto them. If all those rights that are embodied here are so fundamental they must be transferred to the Chapter of Fundamental Rights. I consider that most of them are not fundamental rights but only items of programme of certain schools of political thought. Therefore I submit that these clauses must not find a place here at all; and I believe it is for that reason that Dr. Ambedkar while opposing a programme of this kind embodied in an amendment of Prof. K. T. Shah with regard to the panchayat system said that this constitution is only a mechanism whereby any party which has come into power may utilise it and implement its programme according to its political thoughts, principles and programmes. That is quite right. Now I fail to see how this programme can come into the constitution. Either they are fundamental or they are matters of policy. If they are so fundamental that no legislature can interfere with them and have to be placed beyond the purview of the legislature and the executive, they should be placed somewhere else. In my view, however, these are not fundamental but mere State policy. And Dr. Ambedkar was right when he said that this is only a mechanism and any party which comes into power might implement its principles and programms, ideals and ideologies.

Now, Sir, we next have to see whether there is any enforceability. In a Constitution like this, except where discretion is given to the Governor or the Governor-General or some other authority to act in this way or that way, no clause should find a place which cannot be enforced. Supposing a Government which comes into power does not care about these things, neglects them and ignores them because it has a different mandate from the people. The people have accepted its programme and the guidance that you have provided here is such that it goes against the mandate given to the party by virtue of their having been returned to power: not only that, it neglects them and goes out of the way and does something contrary. What is going to happen? Who is to judge?

It is said by my friend, Mr. Ananthasayanam Ayyangar that the country will judge. The country does not judge these directive principles. It judges the ideals, programmes and the principles of the concerned parties. That is what is called parliamentary democracy. Therefore I submit that not only Article 31 but all the articles that follow — the whole Chapter — has no place. It may be that a certain party thought that unless certain principles are introduced in the Constitution itself by a Constituent Assembly where it has a majority, perhaps in the country political parties might take objection, might canvass support for themselves and against the party at present in power. May be that is the reason. Or perhaps they think these are fundamental rights. One of these reasons must be there. I am sure they cannot be called fundamental rights. So it is the anxiety of the party in power to placate the electorate, saying we have framed a Constitution in which we have made these provisions which are as good, if not better than the principles and programmes of some other party, say the Socialist Party.

So, I submit that these principles are wrong. They do not find a place in the Constitution and on account of the fact that they cannot be enforced they are useless and they had better be deleted.

Shri K. Hanumanthaiya : Sir, I have to oppose the amendment moved by my Socialist friend, Shri Damodar Swarup Seth and I request the House to give its full support to the Article as it stands. If the Honourable Member who moved amendment No. 863 carefully reads Article 30, as well as Article

[Shri K. Hanumanthaiya]

31, clauses (1) and (2), he will surely find that all the ideas he wants to incorporate are contained therein. In fact the previous speaker, Mr. Baig based his opposition to the amendment and to the original clause on this very reason. What he wants to achieve by his amendment is there already—in these two clauses—and therefore, it is completely superfluous to accept this amendment.

As for Mr. Baig, it has become the fashion of his school of thought always to fling a remark at the majority party and I can only say his argument suffers from "Grapes are sour" psychology. Merely because he is in a minority today, he chooses to fling remarks now and then in this fashion. If a particular school of thought persuades the country to be with it, there is nothing sinful or immoral or objectionable in that. The fact that he has not been able to do so is a disqualification in his favour. Instead of admitting this, he cannot go on throwing stones at the majority party in this fashion. The same applies to his argument that this particular section or article wants to bring a particular type of Government into being. It was the case that several centuries back it was a sin to talk of democratic government in this country. It was a question then of a particular king ruling or a particular emperor ruling. The days of one individual or one section of people ruling a country have gone for ever. Now it is a democratic age. It is the people's government. A particular type of Government holds way over the people and the State at a particular time. There was a time when individualism and *laissez faire* policy held sway over Governments. That policy has now been given up. It is now a question of socialization. Now the trend of the time is socialism and that holds the field. Many Honourable Members of this House want to go even in advance of the ideals stated in the Articles. But the Drafting Committee has very happily worded the phraseology which does not favour any of these extremes, and at the same time, it has been so wisely worded that even Communist Party can implement its ideology under article 30 and article 31, clauses (1) and (2), if it comes to power. No party is prevented from implementing its ideology under these sections. If anybody reads the wording of the section he will find—as I for one do—it is difficult to say to what word or to what sentence he can take objection. Therefore, Sir, amendment No. 863 is superfluous and the Article as it stands deserves the full support of this House.

Mr. Hussain Imam : Mr. Vice-President, I regret that it is not possible for me to give my full support to Damodar Swarup Seth nor can I admire the Government or the movers, or those who are behind this article at their great fear of bringing forward anything which will smack of socialism. I regret, Sir, that the Government has succeeded neither in placating the capital nor the labour.…

Shri T. T. Krishnamachari (Madras : General): What has this House got to do with the Government?

Mr. Hussain Imam: I am stating facts as they exist. The articles are being governed by a party and under party whips amendments are stopped.....

Mr. Vice-President : Order, order.

Shri M. Thirumala Rao (Madras : General): My friend wants to say some facts. Should they not be relevant to the subject under discussion?

Mr. Hussain Imam: Let me have my say. You can then say what you like. Mr. Gautam had a similar amendment.

Shri Mohan Lal Gautam (United Provinces : General): Was I called on to move it?

Mr. Hussain Imam: No, Sir.

Mr. Vice-President : Please address the Chair and do not carry on an argument among yourselves; otherwise, I might as well vacate the Chair. I will give him opportunities to criticise the article, but not any particular political party. So far as this House is concerned, there is no political party in existence.

Mr. Hussain Imam : I will follow your advice, Sir. I would mention one fact. The directive principles have laid down a number of liabilities on the future State. What the amendment proposes to do is to supply some assets to meet the liabilities created by the Constitution as it is going to be framed. In that way I welcome the suggestion for a mild type of socialisation. The socialisation envisaged in this amendment is not a full-fledged socialisation. For instance, it does not include the nationalisation of land which is at present the active policy of many of the States in India. Therefore to say that the mover wants to make any revolutionary change or fundamental change is wrong. It must be remembered that we are creating liabilities for the future State of India saying that it shall do this, that and the other. Is it wrong to attempt to place some funds also at the disposal of such a State?

Let me remind the House that when the Eighteenth Amendment to the American Constitution was brought forward to introduce Prohibition, the fact that nothing of that nature (about Prohibition) existed in the Constitution of the United States of America did not prevent the Eighteenth Amendment being moved. Similarly, when the Amendment was repealed six years afterwards, there was nothing in the Constitution to stop it. Is there any provision in the British Constitution for nationalising mines, the State Banks and the Iron and Steel industries? There is no provision and yet they are doing all this. If the existing Constitution is not a bar to the Labour Party bringing in socialist changes, I fail to understand how the provision made in this amendment would prevent the Conservative Party from coming to power and not enforce these measures? This is not a justiciable right. It is just a directive principle of State policy. A political party in power can ignore these directive principles and there is no provision anywhere making it obligatory on the party to see that these directive principles are followed. Not even the President of the Union has been authorised to put his foot down when he sees a State Government going against the directive principles. I therefore suggest that bringing forward of this amendment will not prevent a certain political party from coming to power and there is nothing wrong. These directive principles, as they have been laid down, are singularly inoperative. They merely say that if the people and the Government are good they will observe these directives. I do not think there is any need for having any inaffectual directives at all. It is only when you provide a law or fix a certain standard that you have to provide for those who are not up to that standard. It is just to prevent transgression. And where is the provision here to prevent this? All the directive principles can be ignored by the State Governments and there is no remedy for it. Even the President of the Union cannot do anything to see that the directive principles are observed. The Central Legislature cannot bring forward any motion for the Government which ignores these directive principles to be dismissed or some alternative being adopted. In the Instrument of Instructions issued to Governors under the Government of India Act there was authority given to the Central Government or Secretary of State to see that those instructions are carried out. But here we have provided nothing like that. At least I do not find anything like that and I shall be obliged if Dr. Ambedkar will point out to us any method by means of which transgressions by the Governments of the States of the directive principles can be proceeded against. There must be some method of intervention by the Legislature. The provincial legislatures cannot intervene because the provincial Governments are responsible Governments. If there happens to be a going back on the directive principles, it is not the Ministers alone but the

[Mr. Hussain Imam]

entire legislature that would be responsible for it. So, there must be some superior authority to examine whether the directive principles are followed or not. Unless some provision is made on these lines it will only go to prove what one Honourable Member suggested, *viz.*, that these principles have been brought in just to silence criticism and to have a good sign-board that we have good intentions, without having any intention of following those directions. I therefore suggest that the House should examine the amendments rather more dispassionately and, if there is anything good in these amendments, because of the fact that they have been brought forward by a Member who is not *persona grata* with the majority, they should not be rejected. We are framing a Constitution and in that connection I appeal to the House to be more generous, more conciliatory and more sympathetic and accept the things as they are and not think that by means of these amendments some party will gain advantage. It is not so. It is very necessary that some kind of provision for socialisation should be there. I say this though I do not go as far as Shri Damodar Swarup. But let us give some indication of our trend of thought in our Constitution. Take the case in question of the nationalisation of coal mines accepted by the British Government long ago as an ultimate goal. The Committee which reported on this question in 1935 accept edit as the ultimate goal, though there was then a Conservative Government in power in England. I suggest that these amendments should be dispassionately considered and if there is anything good in them it should be accepted by the Mover of the draft Constitution.

Shri Mahavir Tyagi (United Provinces : General): Sir, from the point of view of making a Constitution for our country, this Article is of great importance. It contains at least a fourth part of the aim which we have in view. For, in the Preamble we say that we are drawing up this constitution with the aim of securing Justice, Equality and Fraternity, Sir this clause is the only clause which directly deals with justice and justice has been defined here as justice, social, economic and political. In fact, Sir, it accommodates all that we desire. It accommodates all the revolutionary slogans in a particular form. It is social and economic justice that is demanded by the most radical of the radicals of the world. This clause is in fact the pivotal point in the Constitution, but still I am inclined to criticise its language. The clause from the language point of view is not strong; it is very halting. Our aim in framing this Constitution is to secure social, economic and political justice, but in the clause as it is worded, unfortunately there are so many halting sub-clauses. It says, "The State shall strive to promote". I think the amendment moved by my honourable friend, Mr. Naziruddin Ahmad, makes the clause read better.

Shri Rohini Kumar Chaudhari (Assam : General): On a point of information, Sir, as the honourable member is supporting this clause, may I ask him kindly to explain the word "inform" used in this clause.

Shri Mahavir Tyagi: "Inform" means animate the institutions of national life. "Inform" is the most idiomatic word which is used in that clause. It adds beauty to the clause. "Inform" means that in the making of the institutions justice should be the foundation. You should not take the word "inform" in the ordinary meaning of the Information Department.

Sir, this clause is very halting. I appeal to Dr. Ambedkar and his other colleagues to accommodate the wishes of the House on all sides. When we want to put something real in the Constitution, why should these lawyers come between our wishes and the Constitution? They should make it absolutely plain that the purpose of the Constitution is to secure justice, social, political and economic. So, Sir, why should they introduce the words "strive to"? Suppose a man wants a recommendation from me and I say, "I will try",

it means that I have not given a promise. Why not say, "The State shall promote"?

Then it goes on to say, "The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, etc." Why introduce so many halting phrases in this clause? Why say, "as it may"? If a government cannot do it, we do not want that government. If a State cannot do it, of what use is that State to us? The function of a State is taken to be only the maintenance of law and order by means of the army and the police. We do not want a police state. In fact, all order and tranquillity which reigns over mankind is not the effect of any government in the world. Its origion lies in the principles of society. Order would remain intact, even if the formality of having Governments had been done away with. The desire to associate is an instinctive feature of man, and so the credit for the peace and tranquillity of the world goes to the individuals who make up the society. The first and the foremost duty of a Government is to promote the welfare of the people. That is why governments are there. If a Government cannot do this, they should have the honesty to move out and give place to others. Sir, it must be made incumbent on the State to promote the welfare of the people by securing justice, social, economic and political, without introducing the words "as it may". I appeal to Dr. Ambedkar to listen to the advice of those who have come here from the people and also of those like me who have no legal knowledge gained in law colleges, in England or elsewhere—unforunately my education has been my experience of the people—I therefore plead and request the House to accommodate the wishes of the people. I hope the wordings of this clause will be changed by my lawyer friends with a view to make it incumbent on the Government to promote the welfare of the people. I am not a man of words; I am a man of ideas and action. I can only give ideas. Dr. Ambedkar is a man of words and therefore he may be able to devise suitable words to convey the idea. This clause must be made very strong and unequivocal. It should be made the first and foremost duty of the Government to promote the welfare of the people by securing and protecting a social order in which justice, social, economic and political shall inform all our institution. If this suggestion of mine is accepted, the most radical of radicals will be accommodated.

Shri Mohanlal Gautam : Is the discussion going to be closed now?

Mr. Vice-President : I have given a reasonable time for discussion, both for and against the amendments.

Shri Mohanlal Gautam : Will you please permit me to speak?

Mr. Vice-President : I maintain that we have had a reasonable amount of time—merely an hour—for discussion and Dr. Ambedkar should now address the House.

Shri Mohanlal Gautam : My submission is that I gave notice of an amendment. It is only a chance that Seth Damodar Swarup's amendment was placed at the top and mine below it and therefore, you did not think it desirable or necessary for me to move it. I stood twice or thrice and I am unfortunate that I was not given a chance to speak on my amendment.

Mr. Vice-President : I think the amendment was discussed at full length and I do not think there is any use moving it now.

Shri T. T. Krishnamachari: Certain observations have been made by a member in regard to the manner the Congressmen in this House are acting. I think, Sir, it is the duty of the Congressmen to repudiate this statement. May I ask you, Sir, to give us an opportunity of repudiating those charges which have been levelled against us?

Mr. Vice-President : I think we had better close the discussion here.

Shrimati Renuka Ray (West Bengal : General): I think this is very unfair.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I see that there is a great deal of misunderstanding as to the real provisions in the Constitution in the minds of those members of the House who are interested in this kind of directive principles. It is quite possible that the misunderstanding or rather inadequate understanding is due to the fact that I myself in my opening speech in support of the motion that I made, did not refer to this aspect of the question. That was because, not that I did not wish to place this matter before the House in a clear-cut fashion, but my speech had already become so large that I did not venture to make it more tiresome than I had already done; but I think it is desirable that I should take a few minutes of the House in order to explain what I regard as the fundamental position taken in the Constitution. As I stated, our Constitution as a piece of mechanism lays down what is called parliamentary democracy. By parliamentary democracy we mean 'one man, one vote'. We also mean that every Government shall be on the anvil, both in its daily affairs and also at the end of a certain period when the voters and the electorate will be given an opportunity to assess the work done by the Government. The reason why we have established in this Constitution a political democracy is because we do not want to instal by any means whatsoever a perpetual dictatorship of any particular body of people. While we have established political democracy, it is also the desire that we should lay down as our ideal economic democracy. We do not want merely to lay down a mechanism to enable people to come and capture power. The Constitution also wishes to lay down an ideal before those who would be forming the Government. That idea is economic democracy, whereby, so far as I am concerned, I understand to mean, 'one man one vote.' The question is: Have we got any fixed idea as to how we should bring about economic democracy? There are various ways in which people believe that economic democracy can be brought about; there are those who believe in individualism as the best form of economic democracy, there are those who believe in having a socialistic state as the best form of economic democracy; there are those who believe in the communistic idea as the most perfect form of economic democracy.

Now, having regard to the fact that there are various ways by which economic democracy may be brought about, we have deliberately introduced in the language that we have used, in the directive principles, something which is not fixed or rigid. We have left enough room for people of different ways of thinking, with regard to the reaching of the ideal of economic democracy, to strive in their own way, to persuade the electorate that it is the best way of reaching economic democracy, the fullest opportunity to act in the way in which they want to act.

Sir, that is the reason why the language of the Articles in Part IV is left in the manner in which this Drafting Committee thought it best to leave it. It is no use giving a fixed, rigid form to something which is not rigid, which is fundamentally changing and must, having regard to the circumstances and the times, keep on changing. It is, therefore, no use saying that the directive principles have no value. In my judgment, the directive principles have a great value, for they lay down that our ideal is economic democracy. Because we did not want merely a parliamentary form of Government to be instituted through the various mechanisms provided in the Constitution, without any direction as to what our economic ideal, as to what our social order ought to be, we deliberately included the Directive Principles in our Constitution. I think, if the friends who are agitated over this question bear in mind what I have said just now that our object in framing this constitution is really two-fold: (i) to lay down the form of political democracy, and (ii) to lay down that our ideal is economic democracy and also to prescribe that every Government

whatever, it is in power, shall strive to bring about economic democracy, much of the misunderstanding under which most members are labouring will disappear.

My friend Mr. Tyagi made an appeal to me to remove the word 'strive', and phrases like that. I think he has misunderstood why we have used the word 'strive'. The word 'strive' which occurs in the Draft Constitution, in my judgment, is very important. We have used it because our intention is that even when there are circumstances which prevent the Government, or which stand in the way of the Government giving effect to these Directive Principles, they shall, even under hard and unpropitious circumstances, always strive in the fulfilment of these Directives. That is why we have used the word 'strive'. Otherwise, it would be open for any Government to say that the circumstances are so bad, that the finances are so inadequate that we cannot even make an effort in the direction in which the Constitution asks us to go. I think my friend Mr. Tyagi will see that the word 'strive' in this context is of great importance and it would be very wrong to delete it.

As to the rest of the amendments, I am afraid I have to oppose them.

Mr. Vice-President : Only two amendments have been moved; I shall put them to vote. The first is amendment No. 863 by Shri Damodar Swarup Seth.

The question is:

"That for article 30, the following be substituted:—

'30. The State shall endeavour to promote the welfare, prosperity and progress of the people by establishing and maintaining democratic socialist order and for the purpose the State shall direct its policy towards securing:—

(a) the transfer to public ownership important means of communication credit, and exchange, mineral resources and the resources of natural power and such other large economic enterprise as are matured for socialisation;

(b) the municipalisation of public utilities;

(c) the encouragement of the organisation of agriculture, credit and industries on co-operative basis."

The amendment was negatived.

Shri H. V. Kamath : I am not pressing my amendment, Sir.

Mr. Vice-President : The next one is amendment No. 867 by Mr. Naziruddin Ahmad.

The question is:—

"That in article 30, the words 'strive to' be omitted."

The Amendment was negatived.

Shri L. Krishnaswami Bharathi (Madras : General): Sir, Mr. Kamath must have the leave of the House to withdraw his amendment.

Mr. Hussain Imam : The Mover has accepted the amendment !

Mr. Vice-President : Does the House give him leave to withdraw?

Several Honourable Members : Yes.

Shri L. Krishnaswami Bharathi : I object to leave being granted.

The Honourable Dr. B. R. Ambedkar : If he wants to withdraw, I have no objection; let him withdraw.

Shri H. V. Kamath : There seems to be some conflict in the House over this. One Honourable Member thinks that Dr. Ambedkar has accepted it. I did not know that he had accepted it. If he has accepted it, then, no question of withdrawal arises.

Mr. Vice-President : Do you wish to withdraw?

Shri H. V. Kamath : Yes.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The Question before the House is:

"That Article 30 stand part of the Constitution."

The motion was adopted.

Article 30 was added to the Constitution.

Shri Mahavir Tyagi: Does this clause pass with the word "the" ?

Mr. Vice-President : It has been passed as it stands now.

New Article 30-A

Kazi Syed Karimuddin : Mr. Vice-President, Sir. I move:

"That after article 30, the following new article be inserted:—

'30-A. The State shall strive to secure prohibition of manufacture, sale or transportation or consumption of intoxicating liquors for beverage purposes.' "

I need not give a very long lecture in this respect. In the American Constitution this has been described as a Fundamental Right. I will read Amendment 21 of the American Constitution:

"The transportation or importation into any State, Territory, or possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited."

Sir, it is a fact known to everybody that Mahatma Gandhi was preaching all his life that the use of liquor and the manufacture of liquor should be prohibited in India; and in fact in keeping with that policy the Provincial Governments in India have been framing laws and are applying those laws. I am really surprised that in the Constitution which is drafted, there is no mention about the prohibition or manufacture or sale of liquors in India. We know that thousands of families have been ruined and are miserable on account of this evil. In the directive principles of the State, which according to Dr. Ambedkar have no sanction, they ought to have been embodied because the State would have tried their utmost to secure prohibition of liquors. The rejection of this additional clause will be the rejection of the wishes of Mahatma Gandhi.

Mr. Vice-President : Amendment No. 873—not moved. Any Member who wishes to speak on amendment 872 may please do so now.

Prof. Shibban Lal Saksena : Sir, my friend Kazi Karimuddin Sahib has raised a very important issue. Although I could not agree that a separate clause for this is necessary here, but I do wish that in clause 31 there should be a sub-clause incorporating that the State Policy is prohibition. In fact the Congress from the very beginning since 1920 has placed prohibition as one of the chief planks of its struggle. Many of us have gone to jail for picketting liquor shops and today shops and I do not think it is proper that in this Constitution when we are laying down the Directive Principles of State policy we should not make mention of prohibition. Of course there is a general clause in part (vi) of 31 which says:

"That childhood and youth are protected against exploitation and against moral and material abandonment."

Of course its meaning is almost the same but that is far too general and I think that prohibition is something so important that this should be mentioned as one of the sub-clauses in article 31. I hope on this matter it is not necessary to give long arguments as it is well-known that many of our Governments have already declared several districts dry. Madras has the honour of declaring first the whole of the province dry. We do not wish to live by the excise revenue which is in fact the revenue got by the ruin of so many labour class families. I therefore think that in our country, when all the religions are unanimous about prohibition, this amendment of Kazi Karimuddin should be mentioned somewhere in Article 31. Because this is something on which the entire House is unanimous. I hope Dr. Ambedkar will see to its inclusion.

Seth Govind Das (C. P. & Berar : General): Sir, I do not wish to press Honourable Dr. Ambedkar to accept this amendment but at the same time I entirely agree with my honourable friend, Prof. Saksena that we are pledged to the policy of prohibition. Everybody knows that in spite of the reduction in revenue in various provinces we follow this policy. It is true that up till now complete prohibition is not there in every province, yet an effort is being made to bring about complete prohibition not only in the provinces but in the Centrally administered areas also. Now, Sir, it would really not be in accordance with our traditions that when we are making a new Constitution for our land, no mention is made about prohibition. I hope that the Honourable Dr. Ambedkar and the Drafting Committee will find out, if this amendment is not accepted, a suitable place in the constitution where a reference is made to prohibition and I think that every community of this land, Hindus, Muslims, Christians, Sikhs, Parsees and others will agree that the principal of prohibition must be accepted in this country and our Constitution should say something with respect to prohibition. Though, Sir, I am not in a position to support the amendment I would request the Honourable Dr. Ambedkar to make the policy in this respect clear.

Mr. Mohamed Ismail Sahib : Sir, I have got the honour to support the amendment that is placed before the House. Sir, you know with regard to the principle underlying this amendment there has not been and there is not any difference of opinion amongst any section of people. Almost all sections political or otherwise, are agreed upon this principle. Therefore, Sir, one would have expected the Government to have made this principle the subject-matter of even a mandatory and statutory article. It is really a very mild amendment to say that this principle on which there is no difference of opinion in the country should be made at least part of this Part, *viz.*, of Directive Principles. I therefore, Sir, earnestly request the Honourable the Mover to accept this amendment; though he may not accept it as part of article 30, he may, as was suggested by one or two of my friends, make it part of article 31. I would request him once again to make prohibition find a place in the Constitution because there is absolutely — I may say almost absolutely — no difference of opinion in the matter. Whatever may be the loss in the matter of revenue, people are agreed that the Government must find other ways and means of revenue and should enforce this principle which the Congress Party as well as the other parties had been advocating for decades.

Shri Biswanath Das : Sir, I am very sorry I have to oppose my honourable friend, the Mover of the amendment: my grounds are there. We have been—I mean the nationalist sections of the country have been—wedded to the principle of entire prohibition but unfortunately my honourable friend wants and proposes as a Directive part of the Constitution that we should prohibit only the manufacture and consumption of liquor. What becomes of opium? Opium is the worst evil that is prevailing in the country. Sir, China and the eastern countries are in their present position because of opium-eating. Therefore, I for myself would not be a party to any prohibition if it does not include the prohibition and manufacture of opium for purposes of consumption.

Sir, I am not in favour of having a reform of this magnitude to be put in the Directive Principles in the Constitution. I consider the Directive Principles of the Fundamental Rights in the Constitution as the Sermon on the Mount. Shri Bhagavat has stated that there is nothing like small and great but fact remains that there are small and great. Therefore nothing will be gained by putting all and sundry in the Fundamental Rights. Under these circumstances I feel that any additions to what we have already is going to serve no useful purpose. We are wedded to democracy. We are going to have a National Government. A National Government even today led and guided by not less

[Shri Biswanath Das]

persons than Pandit Jawaharlal Nehru and Sardar Patel will not have their way if they do not carry the people with them. That being the position, I do not see why the question of prohibition should come in at all here as a Sermon on the Mount. Sir, despite the difficulties, despite the financial stringencies, despite various limitations, the provincial Governments in Madras and other Provinces have already adumbrated the reform. I plead patience with friends. For myself I want an all-India policy in which the provinces and the States should go on together fighting against this mighty demon of drink and opium consumption.

Under these circumstances I do not see how any useful purpose could be served by only putting this in the framework of the Constitution as a Directive Principle. Directive Principles are of course useful and they will serve as a beacon light to the incoming ministries. They will serve as a sort of test for the work of the Ministry after the term of office of five or three years. As test, they remain for ever, but that does not bring us anywhere near our goal if we include this in the Constitution and keep it as a Directive principle. Under the circumstances I am strongly opposed to this addition which will mean nothing more than another Sermon on the Mount. Sir, I want a practical step to be taken and the practical step is being taken, despite difficulties, and I have no hesitation in believing that the installation of a National Government of India, guided and led by a Ministry which is responsible to the Honourable Members of the Constituent Assembly or the National Parliament, will have no other option than to take up this great reform on hand without any delay. Sir, despite difficulties, even the Central Government, ridiculous though it looks, is thinking of having prohibition in the province of Delhi. I state all this merely to show the anxiety of the Government. I again appeal to the Honourable the Mover that nothing can be gained by appealing to sentiments in the name of Mahatma Gandhi. We must look to the practical aspect of the question, and nothing will be served by putting this in the Directive Principles. Under these circumstances, I stand opposed to the amendment.

Shri Mahavir Tyagi : Sir, I have a similar amendment, and that is No. 999; but a practical joke has been played here and my amendment has been completely reversed by the omission of two words. I do not know where and at what time this clerical mistake has occurred or when. My amendment reads thus—

Mr. Vice-President : But I cannot permit you to move your amendment now.

Shri Mahavir Tyagi : No, Sir, I am only quoting it. It reads:

"That at the end of article 38, the following words be inserted:—

'and shall endeavour by means of both temperance and prohibition the use by mouth of liquor and other intoxicating drugs except on medical grounds'."

The words should be "shall endeavour to stop by means of both temperance and prohibition.... etc." I am reminded of a couplet in Urdu which with your permission I will repeat—

Ilahi hamse mai khawaron ko
woh dunya ata hoti;
Jahan hukman piya Kerte,
na pite to saza hoti.

Well, Sir, on this occasion, I have come to oppose this amendment, not because I disagree with its contents but because he has suggested it a bit too early. I feel that the amendment of Syed Karimuddin is one to which we can have the support of an overwhelming majority of this Assembly. But my difficulty is that this is not the proper place where this amendment should come up. My friend wants it to come in as article 30-A. My suggestion

is that it should come below article 31 where all the directives have been enumerated; that is the proper place for his amendment.

That there must be prohibition is admitted to by all. I submit that Gandhiji's foremost plank of constructive programme was prohibition (*cheers*), and we all stand pledged to this programme; we had pledged in front of Gandhiji. We have repeated that pledge tens of times every year on Independence Days and now we cannot falsify that pledge before the nation. The time has now come when we must implement our programme of prohibition. We must bring it in the Constitution. I am in full agreement with the spirit of the amendment, but it is misplaced. I must submit that the Constitution as it is, and I have repeated this many times before, is devoid of Gandhiji's ideas. It is very poor from that point of view. We have not accommodated him in the least. I had hoped that even if he be dead, we would keep his spirit alive, but he stands dead even in this constitution. Without his spirit, I submit that the Constitution is dead. We had given our pledges to stand by his programme, and we had done so in the most unambiguous and unequivocal manner; sir, on such questions we Congressmen cannot compromise, whatever may be the consequences. This prohibition has been in his programme. It has been also in our Election Manifesto, on which all members of the provincial Assemblies were elected, and it is through those elected bodies in the provinces that we have been sent to this Assembly, indirectly. So basically the whole of our electorate has voted for the programme of prohibition, and if now we do not bring it in here, we shall be betraying the wishes and the trust of the whole electorate, and the people on whose behalf we say, rightly or wrongly, that we are making this Constitution. Let us not forget that we are using the name of the people. If we do not appreciate their desires and do not accommodate them in this Constitution, we shall have no moral justification to use the name of the people. If we cannot accommodate even the idea of prohibition in our Constitution, then what else have we been sent here for? We have been talking of revolutions, and about all sorts of progress. But if we cannot have even this small reform in our Constitution; the book will not be even worth touching with a pair of tongs. I therefore submit that if the Draft Constitution does not contain prohibition, it does not contain Gandhiji, because where there is liquor, Gandhiji cannot be, and where Gandhiji is, liquor cannot be. That is the position. Therefore, I submit that this amendment may be accommodated at some proper place in the Constitution. I support the spirit of the amendment, but only oppose it because it is proposed to be put in a place which is not the proper one to incorporate it. With these words I oppose not the spirit, but the place where my friend wants his amendment to be inserted.

Kazi Syed Karimuddin : If Dr. Ambedkar accepts the spirit of my amendment and is prepared to accommodate it in article 31, I will have no objection in withdrawing it.

B. Pocker Sahib Bahadur : Sir, I heartily support this amendment and in doing so I do not want to take up the time of the House except to draw its attention to one fact. One of the previous speakers mentioned financial difficulties which will arise out of prohibition. I only want to draw the attention of the House to the fact that prohibition has been accepted by the Government of Madras, and by the Madras Legislature, and they have worked it out wonderfully well. It is working wonderfully well in spite of financial difficulties, and these difficulties are being overcome. Therefore, I would say financial difficulties should not stand in our way. As was pointed out by the previous speaker, if we have got any real reverence for the views of Gandhiji, we ought to incorporate prohibition at least in the Directive Principles, if not in the mandatory provisions of the Fundamentals Rights. It is not at all a difficult thing to include it in the chapter dealing with the Directive Principles.

[B. Pocker Sahib Bahadur]

After all, it only says, Government shall strive to achieve what is stated there. Therefore I appeal to the House that the Members here should not allow it to be said of them that soon after Gandhiji's death, his wishes and views were also buried nine fathoms deep.

Mr. Vice-President : The House stands adjourned till Monday, the 22nd November, 10 a.m.

The Assembly then adjourned till Ten of the Clock on Monday, the 22nd November, 1948.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 22nd November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten minutes past Ten of the Clock, Mr. Vice-President, (Dr. H. C. Mookherjee), in the Chair.

DRAFT CONSTITUTION—*contd.*

Article 30-A (contd.)

Mr. Vice-President (Dr. H. C. Mookherjee): Before we commence the proceedings of today, I beg to apologise to the House for my delay which I may add is not due to any fault of my own.

We shall now resume discussion on new Article 30-A. Does any Member want to speak on amendment No. 872?

Shri Mahavir Tyagi (United Provinces : General): Sir, the other day I had spoken at length on this amendment, and I had put in a request with the Mover of this amendment to kindly agree to postpone the discussion on this question just now and have it when my amendment No. 999 comes. I hope, if the honourable Mover agrees, then it will be better that you be pleased to postpone discussion just now, and take it up when the proper occasion comes.

Mr. Aziz Ahmad Khan (United Provinces : Muslim): Sir, this amendment was proposed by Mr. Karimuddin who is not present here today but at the same time the amendment was sent by me and him both, and he has specifically authorized me to submit that in case there is an agreement or an undertaking given by the Honourable the Law Member that he is prepared to incorporate the principle of it anywhere in the Constitution, then the amendment may be withdrawn; and I agree to it. Therefore, I am quite prepared to submit to your decision that consideration of the amendment may be delayed till we come to article 38.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Sir, I have not followed exactly what it is, but if it is a matter which relates to prohibition…

Mr. Vice-President : Yes.

The Honourable Dr. B. R. Ambedkar : Then, it has been agreed between myself and Mr. Tyagi that he will move an amendment to Article 38, and I propose to accept his amendment. So, this matter may be postponed until we come to the consideration of Article 38.

Mr. Vice-President : Then we shall pass on to the next amendment No. 873.

Shri Basanta Kumar Das (West Bengal : General): Sir, I am not moving it.

Mr. Vice-President : The next amendment is No. 874.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I tabled this amendment because it appeared to me that the Draft Constitution contained no provisions to secure the most elementary justice or the barest chance of survival as decent and self-respecting citizens of the Indian Union, to the people of those territories in our country which are at present under the control and possession of feudal lords, the jagirdars. I want to invite the attention of this Assembly to the unfortunate circumstances—circumstances

[Shri Raj Bahadur]

which provoke sympathy and pity at one and the same time—under which these people are living. But before I do that I should read my amendment. The amendment runs as follows:

"That after article 30, the following new article 30-A be added:

'30-A. The State shall not recognise feudalism in any shape or form and no person shall be entitled within the territory of India to any special rights or interests on the basis of property falling in the category of Jagirs or Muafis'."

Sometimes the position of these jagirdars and these feudal estates is confused with that of the zamindars and zamindaries. I submit that the two are essentially different in nature, conception and origin. In fact there is no resemblance or similarity between the two. The jagirdars find their origin in past history. They descend from certain ruling families in the States. In other words they are the scions of these families. They enjoy the right to hold properties in their jagirs and estates without paying anything absolutely, or if at all very little, to the State or Government to which they owe their origin. They enjoy independent judicial powers. They have got the right to levy even customs duty in some cases. In some other cases they have got the right to have a separate Police force. They also levy sales tax. Their succession always operates on the principle of primogeniture. As such, *vis-a-vis* the State to which they belong or *vis-a-vis* the Central Government, their position is one of quasi-sovereignty. I should therefore submit that there is nothing common between the zamindars and feudalists. *Vis-a-vis* their people, their rights and authority are almost unlimited. They have the right to levy extortionate rates of rents from the kisans (tenants) under them. It is common knowledge that they enforce begar, that is, forced labour, not only for ordinary purposes of agriculture but even for menial and humiliating jobs. Another thing that constitutes an insult to humanity itself is the imposition of a duty known as "Lagbag" on marriage or other occasions as also the way in which they impose certain humiliating social restrictions as for example in some cases these feudal lords do not allow their ryots and kisans to ride horses in their presence. If there is a marriage party, the bridegroom cannot ride a horse. The womenfolk of their ryots are not allowed to wear even silver trinkets or ornaments. In some cases, this goes to the extent of refusal of the right to hold an umbrella even. I therefore invite the attention of the House that if in a free India such conditions exist and are tolerated then this would mean clearly a denial of democracy and liberty. It is why when we address these people and tell them that "Swaraj has come", they look blankly at our faces. They refuse to believe that Swaraj has really come and we find ourselves in a very awkward position. It is true that now with the democratisation of the States, we have got popular Ministers functioning in the States, but in some of the States where these jagirs or feudal estates exist there are some sort of mixed Governments and Ministries, and our popular Ministers are unable to bring any succour or relief to this hard-pressed and oppressed section of the people.

If we consider the problem from another point of view, we can also see that in our Constitution, there are three classes of States or "units"—firstly, Governor's provinces, secondly, Chief Commissioners' provinces, thirdly, the acceding States. But it is obvious that these feudal estates enjoying a sort of quasi-sovereignty over their people, constitute a class by themselves. It should have been therefore meet and proper that there should have been something in the Constitution to provide for the securing of social justice, of liberty and democratic freedom to the people in these feudal estates. Unfortunately it is not there. The simple question that arises from the amendment I have tabled is whether this Constitution of ours should or should not contain something in order to ensure even an elementary freedom for these people. As far as the Draft

Constitution is concerned, we have been assured that the position of the States, in course of time or may be even before we finish the consideration of the Draft Constitution, shall be brought on a par and equality with the rest of the units of the Indian union. But at the present time there is definitely a difference in the Draft Constitution between the treatment proposed or the present States Unions or States on the one hand and the provinces on the other. This goes to the extent that the people of the States cannot come in the defence of their fundamental rights even, before the Supreme Court. If you want to appeal regarding certain matters there is a special procedure provided for it and that procedure would make it very difficult for us to get even our rights vindicated from the Supreme Court. When I commend this question to the House, I presume that the House will earnestly consider it. I am not very serious to move my amendment. What I am very serious about is that when I go back to my constituency I may face the people with an easy conscience. I want to know in case they ask me, "What have you done for us who are so much hard-pressed under the thumb of these feudal lords?" what answer I shall give to them. I want this answer from this Assembly. It is not my purpose to delay the proper consideration of the Draft Constitution by any frivolous or superfluous amendments, but I submit that the House should come to the relief and succour of these hard-pressed people and our Constitution should contain adequate provisions to secure this.

Mr. Vice-President : I have not been able to make out whether this amendment has been formally moved.

Shri Raj Bahadur : I have not formally moved it. I have simply had my say on it, to invoke the attention of the House on this question.

Shri H. V. Kamath (C. P. & Berar : General): Mr. Vice-President, Sir, it is very unfortunate that several amendments dealing with this subject have been scattered pell-mell in this list of amendments. It would have been much better if these amendments relating to village panchayats had been taken up all together and had been placed in the list also in the same order. Unfortunately, however, that has not been so, and I am constrained to move the amendment as it appears on the Order Paper, because by not moving it, I do not want the impression to be created that I have resiled from the stand which I took in the course of the debate on Dr. Ambedkar's motion for consideration of the Draft Constitution. I am very happy to see that my feeble voice was reinforced by the powerful support of my veteran and elder colleagues in this House and I am glad that several amendments on this subject have appeared. If you are so disposed, Sir, I would formally move it now and request you to hold it over for consideration till the other amendments come up for discussion or an agreed amendment comes up. Whatever the case may be and whichever amendment on this subject is accepted by the House, the other amendments will be withdrawn in favour of that, and mine also will be withdrawn later on; but as matters stand, I have no other go but to move it before the House. I do not want to traverse the ground which I covered in the course of my speech on Dr. Ambedkar's motion. I would only express the hope that where the type of capitalist, parliamentary democracy typified by Europe and America and the centralised socialism typified by the Soviet Union have failed to bring peace, happiness and prosperity to mankind, we in India might be able to set up a new political and economic pattern, and that we would be able to realise the vision of Mahatma Gandhi's Panchayat Raj and, through this system of decentralised socialism, we will lead mankind and the world to the goal of peace and happiness.

I, therefore, with your leave formally move this amendment and make a personal request to you to hold this over till such time as the other amendment to this Article are ready for discussion. I shall read my amendment.

[Shri H. V. Kamath]

"That after article 30, the following new article be inserted:

'30-A. The State shall endeavour to promote the healthy development of Gram Panchayats with a view to ultimately constituting them as basic units of administration.' "

Mr. Vice-President : Does Dr. Ambedkar wish to say anything on this amendment?

The Honourable Dr. B. R. Ambedkar : I move that this matter do stand over.

Mr. Vice-President : I find that there is an amendment, to add a new article 31-A, numbered 927 in the list, standing in the name of Shri K. Santhanam. This, as well as that amendment may be considered together. Is it the wish of the House that this may be done?

Honourable Members : Yes.

Article 31.

Mr. Vice-President : We shall then pass on to article 31.

An Honourable Member : Article 30 has not yet been put to the House.

Mr. Vice-President : It has been put and adopted.

Mr. Vice-President : The House will now take up article 31, for discussion.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, I beg to move:

"That in clause (i) of article 31, the words 'men and women equally' be omitted."

The clause in question is to this effect, that "the citizens, men and women equally, have an adequate means of livelihood." I submit, Sir, that the words 'men and women equally' are unnecessary and redundant. In fact with the acceptance of this amendment, the clause would run thus: "that the citizens have the right to an adequate means of livelihood." I submit, Sir, that the word 'citizen' has been defined in article 5, clause (a). That definition is in general terms and I presume includes the feminine. The masculine, as it is well known, embraces the feminine. In the circumstances, as we have defined,.....

Pandit Lakshmi Kanta Maitra (West Bengal : General): Did the Honourable Member say, "masculine" means "feminine"?

Mr. Naziruddin Ahmad: 'Masculine' includes 'feminine' in interpretation. 'Every person' mentioned in article 5(a) means certainly feminine as well as masculine. Therefore, as the word 'citizen' has been precisely defined and that defined expression 'citizen' has been used in this article, I think the addition of the words "men and women equally" is unnecessary. If we are to make it clear that any law shall apply to men and women equally and if we are forced to declare it everywhere, then this expression has got to be used unnecessarily in many places. Although I agree with the principle that all citizens shall have certain rights without distinction of caste or creed, sex or colour, these words need not be there.

The Honourable Dr. B. R. Ambedkar: I oppose the amendment, Sir.

Shri Mahavir Tyagi: Sir, I have a suggestion to make. There are a number of amendments suggesting improvement in language or change in words. They do not propose any change of the spirit or the meaning of the article concerned. That being so, may I suggest that they may be collected together and sent to a committee which you may appoint to consider and dispose them of? If this is done much of the time of the House can be saved for the consideration of vital and important amendments.

Mr. Vice-President : I am quite willing to fall in with the suggestion, if that is the wish of the House. Probably we shall consider this suggestion later, after two or three days.

Shri Lokanath Misra (Orissa : General): Does it mean an adjournment of the consideration of these motions?

Mr. Vice-President : No. Why should we adjourn it? We can take a vote on it at once and come to a decision.

Prof. K. T. Shah (Bihar : General): Mr. Vice-President, Sir, I beg to move:—

"That in clause (i) of article 31, for the words 'that the citizens, men and women equally, have the right to an adequate' the words 'every citizen has the right to an adequate' be substituted."

Sir, in commending this motion to the House, I would like to be understood in the first place that this is not merely an attempt to improve upon language. I do not profess to be an authority on the English language, and much less on the mysteries of technical draftsmanship as is implied in this language. Mine is only a common sense view of this matter. The term "the citizens", as it is used in this clause, is so collective that I am afraid its distributive sense is apt to be lost sight of. I am, therefore, proposing to substitute for the words "the citizens" the words "every citizen" so that each and every member of the society shall have this right to an adequate standard of living. The distributive sense is brought out much better by my amendment, this very language is used in another article in this Chapter itself later on when they are speaking of the right to primary education. I am therefore suggesting no innovation which is not authorised by the draftsman's own terminology.

It is, of course, beyond me to say why in one article, in one and the same Chapter, they use the collective expression "the citizens", while in another article in the same Chapter they use the words "every citizen" and in a third again some different form. This, Sir, is the reason why, not understanding the distinction that may have been in the mind of the draftsman for using a variety of expressions to convey perhaps the same meaning, at least to a common sense man, I am proposing this amendment. If the intention is that the words "the citizens" are used in the collective sense, then I submit that would be an offence more of substance than I am at present inclined to believe while reading this article. For taking the term collectively it can at best express a vague hope for the happiness of the average citizen. Now, the law of averages is a very misleading law, and will give you a sort of satisfaction for which in truth there can be no basis. I have no desire to convert this debate into any kind of light hearted exhibition of one's capacity to entertain the House; but I cannot help bringing here to the notice of the House the mischief that the vagaries of the mere mechanical statistician can reduce the law of averages, and give a result which is totally opposed to fact. In illustration, may I say that I have heard the story of a women's hostel having to be reported upon, when the trustees of the hostel came to know that there were ten girls, and one of them had apparently misconducted herself. There was some trouble and a statistical authority was called in to investigate and report on this hostel. He examined the inmates and made the famous report saying that everyone of the inmates of the hostel was ninety per cent virgin and ten per cent pregnant. In this statement he was simply applying the law of the average.

I do not know whether it is fully appreciated that this kind of perpetration is within the power of the expert to achieve; and as I do not wish the Constitution to lead to this kind of expert technical perfection, I wish to substitute the words "every citizen" for the words "the citizens", which will leave no room for doubt in the matter.

[Prof. K. T. Shah]

Another reason why I am moving this amendment for dropping the words "men and women equally" is that it smacks too much in my opinion, of patronising by men over women. There is no reason for man to believe that he is even an equal to woman, let alone superior. According to that view which I have always entertained that man is a somewhat lower animal as compared to woman, I feel that this exhibition of patronage by man over woman, as if we were conferring any special right, ought to be expunged from the Constitution.

Citizens are citizens irrespective of sex, age or creed; and that being one of the fundamental propositions accepted by the Constitution, I see no reason why we should say "men and women, equally" as if we were pleased to grant equal rights to men and women, rights moreover which are only directives, and therefore not necessarily to be implemented immediately. For these reasons, I suggest that this amendment ought to be taken, not merely as a verbal amendment, but one of substance, and I trust that those responsible for moving this Constitution before the House will accept it.

Mr. Vice-President : I understand that even though amendment No. 884 is to be negatived, I must give an opportunity to Mr. Naziruddin Ahmad to speak on it.

Mr. Naziruddin Ahmad : Not moving it, Sir.

Mr. Vice-President : Then 885, Professor K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That for clause (ii) of article 31, the following be substituted:

'(ii) that the ownership, control and management of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested in and belong to the country collectively and shall be exploited and developed on behalf of the community by the State as represented by the Central or Provincial Governments or local governing authority or statutory corporation as may be provided for in each case by Act of Parliament';"

Sir, the original clause for which I propose this one in substitution stands as follows:—

"(ii) that the ownership and control of the material resources of the community are so distributed as best to sub serve the common good;"

If I may venture to say so, Sir, the clause, as it stands can lend itself to any interpretation; and, with the background on which we have been working, with the traditions under which the administrative machinery is operating, and the allegiance which vested interests command in this House, I am afraid that, if this clause is allowed to stand as it is, instead of serving any purpose, it will make the proper development of the country or the just redistribution of its wealth, or bringing in a fair measure of social justice, only an empty dream.

I suggest, therefore, that it should be substituted by what I have just read out, where by the ownership, control and management of the natural resources shall be vested in the community collectively, and shall be exploited, developed and worked by the community as represented by the Central or Provincial or Local Governments, or by any statutory corporations that may have been created for the purpose.

I think there can be no dispute on this proposition that, as regards the natural resources that I have tried to describe, no human being has lent any value to those resources by his or her own labour.

They are gifts of nature. They are the initial endowment which each country has in greater or less measure; and, in mere equity, they should belong to all people collectively. And if they are to be developed, they should be developed also by, for, and on behalf of the community collectively.

The creation or even the presence of vested interests, of private monopolists, of those who seek only a profit for themselves, however useful, important, or necessary the production of such natural resources may be for the welfare of the community, is an offence in my opinion against the community, against the long-range interests of the country as a whole, against the unborn generations, that those of us who are steeped to the hilt, as it were, in ideals of private property and the profit motive, do not seem to realise to the fullest.

In the resources that are mentioned in my amendment not only is there no creation of any value or utility by anybody's proprietary right being there, but what is more, the real value comes always by the common effort of society, by the social circumstances that go to make any particular interests or resources of this kind valuable.

Take mines and mineral wealth. Mines and mineral wealth, as everybody knows, are an exhaustible, — a wasting asset. Unfortunately, these, instead of having been guarded and properly protected and kept for the community to be utilised in a very economical and thrifty manner, have been made over to individual profit-seeking concession-holders and private monopolists, so that we have no control over their exploitation, really speaking, for they are used in a manner almost criminal, so that they can obtain the utmost profit on them for themselves, regardless of what would happen if and when the mines should come to an end or the stored up wealth of ages past is exhausted.

I suggest, therefore, that we allow no long range interests of private profit-seekers involved in the utilisation of these mines and the mineral wealth, that on the proper utilisation of these mines and mineral wealth depends not only our industrial position, depend not only all our ambitions, hopes and dreams of industrialising this country, but what is much more, depends also the defence and security of the nation. It would, therefore, I repeat, be a crime against the community and its unborn generations if you do not realise, even at this hour, that the mineral wealth of the country cannot be left untouched in private hands, to be used, manipulated, exploited, exhausted as they like for their own profit.

It is high time, therefore, that in this Constitution we lay down very categorically that the ultimate ownership, the direct management, conduct and development of these resources can only be in the hands of the State or the agents of the State, the representatives of the State, or the creatures of the State, like Provinces, municipalities, or statutory corporations.

Another argument may also be advanced here in support of my view. By their very nature, these resources cannot be exploited economically or efficiently unless they become monopolies. In one form or another, they have to be developed in a monopolistic manner. Now monopolies are always distrusted so long as they remain in private hands and are operated for private profit. If they are to be monopolized, as I believe inevitably they will have to be, then it is just as well that they should be owned, managed and worked by the State.

It is not enough to provide only for a sort of vague State control over them as the original clause does; it is not enough merely to say that they could be so utilised as to "sub serve the common good," every word of which is vague, undefined and undefinable, and capable of being twisted to such a sense in any court of law, before any tribunal by clever, competent lawyers, as to be wholly divorced from the intention of the draftsman, assuming that the draftsman had some such intention as I am trying to present before the House. We must have more positive guarantee of their proper, social and wholly beneficial utilisation; and that can only be achieved if their ownership, control and management are vested in public hands.

[Prof. K. T. Shah]

Considerations, therefore, of immediate wealth, of the necessity of industrialisation, of national defence, and of social justice have moved me to invite this House to consider my amendment favourably, namely, that without a proper full-fledged ownership, absolute control and direct management by the State or its representatives of these resources, we will not be able to realise all our dreams in a fair, efficient, economical manner which I wish to attain by this means.

Most of these forms of wealth, I need hardly tell this House, are yet undeveloped, or developed in a very, very superficial manner. It is to be hoped that in years to come, we shall undertake and carry out a much more direct, a much more effective and efficient Plan for the all round development of the country, in every part and in every item of our available resources. If that is so, if we are going to achieve, if we are going to take that as our first concern, for the new life that is pulsating throughout the country, then I put it to you, Sir, that without some such provision, it would not be possible to attain the objective as quickly and as economically as we would desire.

I would only add one word. Deliberately, I have not included in the list of initial resources of the country, the biggest of them, namely land. I have not mentioned it, not because I do not believe that land should be owned, operated and held collectively, but because I recognize that the various measures that have been in recent years adopted to exclude landed proprietors—zamindars to oust them and take over the land, would automatically involve the proposition that the agricultural or culturable land of this country belongs to the country collectively, and must be used and developed for its benefit.

For these reasons, therefore, Sir, while particularising the natural resources which we should have in common ownership and develop collectively, I have deliberately left out perhaps the most important of them all. But that I trust will not prejudice the fate of this proposition by itself. I commend it to the House.

(Amendments Nos. 886 to 891 were not moved.)

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That for clause (iii) of article 31, the following be substituted:

'(iii) that there shall be no private monopolies in any form of production of material wealth, social service, or public utilities nor shall there be any concentration of means of production and distribution in private hands and the State shall adopt every means to prevent such concentration or accumulation'."

Sir, the original Article as it is drafted reads as follows:

"(iii) that there shall be no private monopolies in any form of production of material wealth and means of production to the common detriment."

Once again, I have to use the same argument namely that while I have taken the phraseology that is given in my amendment almost entirely from the Draft itself, I have tried to make it much more clear and unambiguous than the Draft makes it. I feel, Sir, that if the Draft remains as it is, it is liable to be interpreted in a way not at all intended perhaps by the draftsmen, or, at any rate, not understood in that sense by the reader.

I think, Sir, that monopolies by themselves are very offensive to the common good. In every country whose history is recorded, wherever they have manifested themselves, there have been cries of protest against their presence. Some of the most important decisions which have contributed materially to the growth of the English Constitution have been in regard to monopolies granted by the Crown. No fight was so strong in the ages gone by in England or France or other countries which have experienced this in a more intense form than the fight against the monopolies.

Monopolies, however, need not be created or established by direct grant or patent, or in a legal, open form that would admit itself to be caught or controlled, so to say, by the straightforward operation of any provision like this included in the Constitution or legal system in general.

Monopolies develop much more artificially; monopolies develop much more by force of the very circumstances that competition is supposed to provide. In a competitive society, we are told, the only guarantee of the common good being served is that, by the mere process of competition amongst themselves, the competing producers will have so to reduce prices, they would have so to bring down their costs or selling price, that the largest amount of profit can be gained if the monopolised commodity is consumed by the widest number of consumers. In actual fact, however, Sir, in every country that has got industrialised, and commercialised on a wide scale, you find that the competitors soon come to realise that competition is good for nobody. Hence by arrangement amongst themselves, by all sorts of devices, like Trusts, Syndicates, and Cartels, they try to make a virtual monopoly, which may seem inoffensive on the face of it, which may even appear to be aimed at cutting out costs and reducing over heads, and thereby making the product more easily and more cheaply accessible; but which, in fact, really result in adding enormously to the increasing profit of the private proprietor.

I take it, Sir, that members of this enlightened House will be all too familiar with the history of Trusts in England or America, and of the Syndicates and Cartels in Germany or France, for me to outline it. They would easily realise how insidiously, how slowly, but how irresistibly the movement for Trustification, Syndication, Cartelisation, combination or monopoly in all important industries began to develop, what devices they adopt for holding these monopolies tightly and closely among a selected few of their own blood circle, and what part the Interlocking Directorate plays in the general direction of policy; how when competition is intense, they try to ruin every new appearance in the field, so that the field remains for ever their exclusive possession, their exclusive property.

We in this country have too bitter, too recent, too varied and too numerous experiences of the operation of foreign monopolists, who, until the other day, held power in our country, whereby any indigenous enterprise that was against the vested interests of the alien Monopolists, had to put up the most intense struggle against the monopolist outsiders. Only the other day we had the spectacle, in which the history of the growth of a great national shipping concern was outlined. Those who know the vicissitudes through which that concern has gone, would realise the long years of fight, the discouraging developments that they had to put up with, because the Government of the country in those days was a foreign Government. Because the new competing interest was an Indian interest, it did not suit the Government to allow the foreign monopolists in any way to suffer, and the native new enterprise to succeed. The latter, therefore had to suffer all kinds of handicaps and disadvantages, into the details of which this is not the place nor the time to go. The fact, however, that in spite of that, by the support of the people, by the intrinsic strength of the service they wanted to render, the enterprise has survived to this day, does not undo the principal argument that I am trying to place before the House, that private Monopolies, by their very nature, are not in the interests of the public, unless they are of the community as a whole.

A private less correct monopolists will always be a predatory creature, who will hunt and prey upon those who become consumers of his product or service. Whether it is in an ordinary industry like the manufacturing industry

[Prof. K. T. Shah]

turning out a given product, or in any industry which is making consumer goods, or in a social service, like Education or Health, there is danger of monopolists creating strong private interest which it will never be in the interests of the country to tolerate. I should therefore forbid the very possibility of any monopoly emerging, let us say, in the matter of education or educational apparatus, let us say, in regard to health or the production of drugs, or making medicines, or the supply of surgical and other instruments and apparatuses. I would beg to submit to this House that there is every danger of our country being dominated by private monopolists unless, from the very start, in this very Constitution we make it perfectly clear that in this New India, there shall be no room for private monopolists, who would be predatory, who would be preying upon their kind as cannibals in a form that no savage or alleged savage of the Pacific Seas would do.

The civilised cannibal of our time, the blood-sucker, is the exploiter who is highly honoured, who is often titled, who is very fully represented in this House also, and is therefore able to dictate to you, and inspire you in innumerable ways, as to how you shall provide for his safety in the Constitution itself, so that he could get a new lease of life and go on in a variety of ways, multiplying, diversifying, increasing and intensifying his monopoly to the prejudice of the common people, to the prejudice of the country's defence, to the prejudice of all those who have been looking forward to this age as an age in which real power is supposed to be vested in the representatives of the people in this House, to be able at least to obtain the immediate necessaries of life without paying the toll of the profiteer, and as such to be able to lead a life a little above the level of the beasts.

The Honourable Shri K. Santhanam: (Madras: General): Does the expression 'Private Monopolies' include monopolies by public companies?

Prof. K. T. Shah : I have already said in an earlier amendment that I would not only have monopolies but only monopolies when they are public, either Government owned, State-owned or owned by state Corporations. If by public companies you mean statutory companies, the answer is in the affirmative. But if you mean by public companies only those that are registered and falling under the Companies Act as public companies, then the answer is in the negative.

The Honourable Shri K. Santhanam : The expression 'private monopolies' will exclude public limited companies.

Prof. K. T. Shah : I would invite my Honourable friend to help me in making it much more explicit. If he will not, then he will forgive me for not paying more attention to these very casuistic words. The monopolies I have in mind are represented much more by Trusts, by inter-locking Directorates, by a variety of ways by which banks, insurance companies, transport concerns, electricity concerns, power corporations, utility corporations of all kinds etc. yet all combined horizontally, vertically, angularly, sideways, backways and frontways, so that if you take up the totality of them all, you will find that this country is in the grip of between 300 to 500 people or families so far as economic life of this country is concerned. They may have their nephews and their nieces functioning in various capacities. One may work in a factory, another may shine in sports, a third may flirt with Art, and a fourth may endow Science and Learning. One may be a Manager, and another may be a philanthrophist, and yet another may be a religious teacher, but that does not change the complexion. There are a few hundred families in this country which hold us all in economic slavery of a kind that the

slavery in the Southern States of America has no comparison. If you do not open your eyes even now, then you are inviting with open eyes the kind of revolution in a form which none of us might desire but none of us would be able to resist. Sir, I commend this proposal to this House.

Mr. Naziruddin Ahmad : Sir, I beg to move:—

"That in clause (iii) of article 31, for the word 'concentration' the words 'undue concentration' be substituted."

Sir, the passage in the Draft Constitution runs thus:—

"That the operation of the economic system does not result in the concentration of wealth and means of production to the common detriment etc."

My amendment would be to the effect that the clause should prevent "undue" concentration of wealth and means of production to the common detriment. I submit that the economic system which we have here today and which it seems is in view, would necessarily mean that the wealth and means of production would be uneconomic; unless we want to introduce a Communistic State, these inequities would be inevitable. Even in the Communistic State of today there are inequities. I submit, Sir, that it is impossible to equalise wealth and means of production in the hands of all. I submit, the earning of a good business man, that of a lawyer of eminence, that of a Minister of eminence and that of a common man in the street or a Chaprasi, cannot be equal. So I submit that all that we should attempt to prevent is "undue" concentration of wealth and means of production. There would be inevitable concentration of some wealth and the means of production. I submit Sir, that this word would remove the misconception.

(Amendments Nos. 896 to 903 were not moved.)

Mr. Naziruddin Ahmad: Sir, Amendment No. 904 consists of three parts, of which I wish to move only parts two and three.

Sir, I beg to move that in clause (v) of article 31, for the word "abused" the word "exploited", and for the words "economic necessity" the word "want" be substituted.

Mr. Vice-President: Is it necessary to make a speech?

Mr. Naziruddin Ahmad : No, Sir.

Mr. Vice-President : Amendment No. 905, Mr. Kamath.

Shri H. V. Kamath : Mr. Vice-President, Sir, I find that so far as this amendment of mine is concerned, I am in very good company. I find that the Drafting Committee has sponsored an amendment—No. 907—to the same effect.

The clause as it stands, reads as follows:

"That State shall.....direct its policy towards securing.....that citizens are not forced by economic necessity to enter avocations unsuited to their age or strength."

My amendment seeks to add the word "sex" also, so that it will then read thus:

".....are not forced by economic necessity to enter avocations unsuited to their age, sex or strength."

I feel, Sir, that so long as the economic system is what it is today, it is conceivable that women might be forced by sheer necessity to take to occupations which may not be suitable to the conditions imposed on them by nature. I personally feel that this would be a wise amendment, a wise move, to see that necessity does not force women to enter certain occupations.

[Shri H. V. Kamath]

Since sending in this amendment, however, I have ascertained from my Honourable women friends in this House that they are not very keen on this provision being made, in this clause. So in spite of my inclination to the contrary, in spite of my disposition to retain this amendment, I have decided, out of deference to their wishes, not to press this amendment, and not to move it. Of course, it will await the fate of amendment No. 907 which has been officially sponsored.

Shri C. Subramaniam (Madras: General): Sir, can a speech be made if the Member is not moving his amendment?

Mr. Vice-President : I did not notice till the very end that Mr. Kamath was not going to move his amendment. We are all in the hands of Mr. Kamath in this matter. I am not a prophet.

Then we come to amendment No. 906, Shri Sahu.

Shri Lakshminarayan Sahu (Orissa: General) : *[Mr. Vice-President, I move the amendment which stands in my name:

"That in clause (v) of article 31, for the words 'their age' the words 'their age, sex' be substituted."

Mr. Kamath admitted here that even he considers that the word 'Sex' should be put in but that he did not do so because the term 'Sex' was not liked by some lady members of this House. But I insist that this word should be retained here. I would like to know the reasons which led them to say that they did not like this word. We see that the word 'Sex' has already been used in article 9 of the Fundamental Rights. We also know that we use the word 'Linga' in our language, and so I fail to see the harm likely to be done by the use of this word here.

Secondly, if we do not use the word 'Sex' here, many unpleasant complications are likely to ensure. In order to avoid all such complications I would like that the words "Unsuited to their age, sex and strength" should be retained. There are many such factories and mines which are not fit for women to work in. But many women are compelled by circumstances to work there. To stop this practice the word "Sex" should be specifically used here.

The third point is that the members of the Drafting Committee like to use the word 'sex' here. When it is so, I do not find any reason to delete it. And hence the word sex must be retained so that women may be saved from exploitation. The condition of the women of our country is rather deplorable and I do not like that they should work day and night in the mines and be obliged to adopt some such profession which may spoil their home life. On account of these three reasons I propose that this word 'Sex' must be retained here and I move this amendment accordingly.]

Mr. Vice-President : No. 907, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : Not moving.

Mr. Vice-President : Then No. 908. Mr. Syed Abdur Rouf.

Syed Abdur Rouf (Assam : Muslim) : Sir, I beg to move:

"That in clause (v) of article 31, for the words 'to their age or strength' the words 'to their sex, age or health' be substituted."

From the trend of the amendments it is seen that so far as acceptance of the word "sex" is concerned, there is unanimity of opinion in the House. Now, in my amendment I have tried further to add the word "health" in place of "strength", because I think the word "health" includes and connotes the

* [ ] Translation of Hindustani speech.

word "strength", but the word "strength" does not necessarily connote the word "health". On this ground the word "strength" is unsuited. If we want to save the worker from ruin, we should consider the health of the worker, not merely his strength. I therefore commend this amendment for the acceptance of the House.

Shri S. V. Krishnamoorthy Rao (Mysore) : Sir, I move:

"That in clause (v) of article 31, for the words 'that the strength and health' the words 'that the health and strength' be substituted."

My amendment is only in order to rearrange the phraseology. My only justification is that strength follows health and the phraseology sounds better. Sir, I move.

(Amendments Nos. 910 to 913 were not moved.)

Rev. Jerome D'Souza (Madras : General) : Mr. Vice-President, I am grateful to you for the opportunity you have given me of making a very brief statement on this amendment which I and some of my friends have tabled. Let me say at once, to reassure this House that that statement will be brief and that for reasons which I shall presently explain, it is not my intention to press the amendment. But, Sir, I deem it a matter of some importance that the grounds which moved us to table this amendment should be understood by this House, and that the broad principles on which we have based this request may be appreciated, so that though at the present moment and in the present form this amendment may not be acceptable or may not be prudently pressed, the spirit of it may be understood and somehow embodied in this momentous and solemn document of our Constitution.

Sir, there have been complaints from many sides of this House that our Constitution does not reflect the spirit or the genius of our people, that it is a kind of mixed recipe got up from various foreign sources and foreign constitutions. To a certain extent this was inevitable, but I am sure that the framers of the Draft have partly answered this criticism by the embodiment of certain principles in this part of the Constitution, the Directive Principles.

Now, Sir, if one thing characterises our people more than anything else, it is the power and the sanctity of the family tie, the sacredness which we have been accustomed to attach to the sanctities that go to make up the spirit and the atmosphere of home life. Therefore, I am sure that every section of this House will feel that it is in the fitness of things that this strong and traditional spirit of our nation and race might somehow be expressed in our Constitution. Sir, I venture to say that if the virtues, the strength and manhood of our people have survived so many centuries of invasion and subjection, it is because, in spite of external and political changes, the strength of the family, its protective power, its capacity to inspire and maintain virtue and moral strength, have never been diminished, have never been completely overcome in our land. Whatever is best in the Caste system—and nobody will say that it is an unmixed evil—I venture to say is an extension of the family spirit, and the attachment to family ties that has come out of it is its best and most admirable characteristic.

Sir, in a Constitution, we undertake legislation for the organisation of society. We are speaking of villages, of provinces and the Centre, of tribes and Communities, and every other form of society. Now, the primary unit of society, one whose limits and characteristics are fixed by nature itself, is the family. The varieties and forms of external civil society may vary and change, but the limits, the characteristics, the fundamental features of the family, are fixed by nature. And it is within the bosom of the family that the social virtues, on the basis of which we are making this Constitution, and the firmness of which will be responsible for the carrying out of the Constitu-

[Rev. Jerome D'Souza]

tion, those fundamental virtues are developed and most lastingly founded in the family circle—mutual regard, mutual dependence, respect for authority and order, foresight and planning, and even the capacity for negotiating with other units,—qualities which would be required on a wider scale and in a wider theatre in our political and public life. Nay, Sir, patriotism itself is but the extension and the amplification of the love of the family. We call our country Fatherland or Motherland. Even before we know the culture and the extent and the greatness of our historical past, we begin to love our country because we love the little place where we were born, because the scenes and the sounds and the sights of those places are linked for ever in our memories with the voices and visages which are among the most lasting and most treasured things in life. Therefore, I feel that this House will not reject this plea that in some form our respect and love for family traditions, may be reflected in this Constitution.

Now, Sir, I know that there is a serious divergence of view as to what this amendment should imply, in what manner the family should be protected and how its stability should be ensured. Let me, Sir, in all frankness place before you very briefly what was in my mind about the means of ensuring the stability of the family. In the first place, I believe it implies that in the majority of instances, in a normal state of society, the mother of the family should have freedom and leisure to give all her attention to the upbringing of her children and to the maintenance of that family. Now, I do not say that it is obligatory on her to do so always—there are exceptions, and she may sometimes find it convenient to give her best energies to answer the higher vocation of public life and public service. But under normal conditions this is her main and her sacred duty, and this implies that the wage-earner, be he the working man, be he the poorest in the country, should have a wage which will enable him to maintain his wife and children, a *family wage*, a concept which modern social legislation tends to accept more and more. I say, therefore, that the head of the family is not to get a wage in accordance with the strict principle of remuneration for labour done according to the laws of liberal economics. I rather say that society owes him, as the head of a family and as one of the most important elements in the organisation of society, a maintenance to which he has a right, partly independently of whatever work he does. That is one principle which this amendment implies.

In the second place, I believe that this amendment, or this idea of sacredness of the family, implies a readiness on the part of the State to recognise and encourage the institution of marriage in every way possible in its stable and monogamous form. I wish to draw the attention of the House to this fact that in all societies the tendency is to recognise more and more monogamous marriages as the only legal form of marriage. Moreover, I am aware of, and I am not here prepared to discuss, the claims of the women of our land to some degree of facility in breaking up unions which are no longer happy. I admit there may be grounds for separation when a union has become utterly unhappy. I plead at least for this: that the State should look with caution and prudence, nay with positive disfavour, on the multiplication of the facilities for divorce in order that the permanence and happiness of the family may be ensured.

In the third place,—and I know that here again I shall provoke the opposition of many elements, but nevertheless, it is necessary to state it on this occasion and in this House—it would be unfortunate if the State gave official patronage or approbation or encouragement to the artificial limitation of families. We in India who are recipients of such bounty from nature have nothing to fear from the multiplication of the greatest source of our wealth,

namely, the manhood of our land, the hard-working men and women of our race.

Lastly, I would, as a last idea which should accompany this notion of the sanctity and permanence and stability of the family, plead for respect for the rights of parents, the recognition of all reasonable authority on the part of parents in regard to their children, particularly, the right of the parent to see that his child is brought up in the traditions and in the beliefs, which are dear to him, so that there may not be in his family a disruption of the happy atmosphere, the uniformity, the homogeneity which should normally reign there. These are the implications—grave, far reaching, but I believe, acceptable to the vast majority of our countrymen—these are the implications of this amendment. But as I said already, it is because I understand that in this particular form and owing to the vagueness of its implications there may be very serious difference of opinion, I am prepared not to press it at the present moment, but I do want this House and my most honoured and most respected colleagues somehow and at sometime and in some form to speak the word which would ensure for future generations the blessings which they and we ourselves have inherited and enjoyed, to recognise that the great virtues which go to make up the greatness of a country—personal worth—are best developed in an early period and within the atmosphere of the home. We are optimists and democrats, but we know that human nature has many evil inclinations and if they are not to get the better of a man, if the vicious and anti-social elements in his nature are not to gain the upper hand, it is during these tender years that the seeds of lasting civic virtues should be planted. I therefore ask you, my honoured colleagues, to turn your attention, to turn your regard, back to that treasury of the tenderest and the most sacred memories that you have, the voices and the visages that are most dear to you, and appreciating all you have received from that circle and from those people, do something to ensure that the future children of this land will be blessed with the same happiness.

Shri V. C. Kesava Rao (Madras: General): I do not move amendment No. 917 standing in my name but I reserve the right of moving it later in connection with fundamental rights.

Pandit Thakur Dass Bhargava (East Punjab: General): I am not moving amendment No. 920 at present, but when we come to fundamental rights, I propose to move it.

I am not moving No. 923. The same remarks apply as in 920.

Mr. Vice-President : The article is now open for general discussion.

Prof. Shibban Lal Saksena (United Provinces: General): This is a clause which is very fundamental in our Constitution. The character of the amendments suggested also shows that it goes to the very root of the whole Constitution. My sympathies are undoubtedly with the amendments of Prof. K. T. Shah who has moved two amendments which really suggest that in this clause we should lay down that the system of our State shall be "Socialist". In an amendment to the Preamble I have suggested that the word "Socialist", should be added before the word "Union". I personally feel that the particular amendments which he has moved are very important and I would urge on my friend Dr. Ambedkar at least to incorporate the spirit of those amendments somewhere in the Constitution. Part (2) of article 31 says:

> "...Ownership and control of the material resources of the community are so distributed as best to subserve the common good."

Now, this enunciation "ownership and control of the material resources of the community to be distributed so as to subserve the common good" is a

[Prof. Shibban Lal Saksena]

very wide enunciation of a most important principle. The enunciation is so general that any system of economy can be based upon it. Upon it can be based a system of socialist economy where all the resources of the country belong to the State and are to be used for the well being of the community as a whole. But a majority in the next Parliament can also come forward and say that the New Deal evolved by Roosevelt is the best system, and it should be adopted. This clause leaves it open to any future Parliament to evolve the best plan of their choice. But I feel personally that we should today at least lay down that the key industries of the country shall be owned by the State. This has been an important programme of the Congress since 1921. The Congress has accepted the principle that the key industries shall be controlled by the State. Even recently in the committee appointed by the Congress the report mentioned that the key industries shall be owned by the State; for the present we have postponed nationalisation of key industries for ten years. But I do feel that in our Constitution we must lay down that this is our fundamental policy. Unless we lay down in the Constitution itself that the key industries shall be nationalised and shall be primarily used to serve the needs of the nation, we shall be guilty of a great betrayal. Even if the principle is not to be enforced today, we must lay down in this clause (ii) about directive principles that the key industries shall be owned by the State. That is, according to the Congress, the best method of distributing the material resources of the country. I therefore think that Professor Shah's amendment has merely drawn attention to this fundamental principle.

His second amendment is against monopolies and my sympathies are entirely with him. The system of monopolies has been admitted to be very wrong everywhere. In America, about 54 per cent of the nation's wealth is owned by some 60 families of that State and it is said that the 12 directors of these industrial concerns there are more powerful than even the Cabinet Ministers of the U.S.A. I therefore think that we must take a lesson from the other countries and lay down in our Constitution that monopolies will not be permitted in India. This being so I trust that Dr. Ambedkar will try to incorporate this idea in the clause by means of an appropriate amendment.

I know there is one merit in his draft which is that he has left the whole thing open and it is my hope that he will incorporate this idea in the clause. This Assembly, which has the majority from one party that has already committed itself to these principles, should lay down these principles in the Constitution itself. As I said, Dr. Ambedkar has left the whole thing open and it is possible that an Assembly elected on the basis of adult franchise will lay it down that the State shall own and control the key industries.

I have given notice of an amendment to an amendment of Mr. Kamath (875-A) which he did not move. My object there was to substitute for the words "The State shall foster the growth" the words, "the State shall promote the development". The amended amendment would have read: "The State shall promote the development of economic and social democracy and to that end direct its policy towards securing." I had proposed that this amendment should be incorporated in the first line of article 31 in accordance with the view announced by Dr. Ambedkar the other day that we want an economic democracy on the basis of 'one man one value'. It is a great ideal and I congratulate him for giving expression to that great ideal. With these words I commend this article to the House and I hope that the spirit of my criticism will be remembered by Dr. Ambedkar.

Shri Jadubana Sahaya (Bihar: General): With your kind permission, Sir I hope the House will give me the indulgence of making certain observations in regard to article 31 which is now before the House for its consideration.

Sir, it was said, possibly yesterday, that this article of this Chapter is the Charter of economic democracy. It was also said that in this Charter and in this article we could find the germs of socialism and other isms. It was said also that this article was the Charter of the poor man. I most respectfully submit that in this Chapter, Article 31 is the pivot around which everything will revolve. Article 31 clause (ii) is the most important feature to which I shall most respectfully draw the attention of the House. But it is not possible for me, I am sorry, to support the amendment moved by my friend Professor Shah outright, because I respectfully submit it is loosely worded. But I may state for the information of the House that, so far as the principles which underlie his amendment are concerned, I support them. The spirit of it also I support. I fail to see why this august Assembly which meets only once in every country, is not keen to the extent of clearly and boldly incorporating in this article that the means of production and the natural or material resources of the country shall belong to the community and through it to the State. I cannot understand this, though the large majority of the amendments, if you scrutinise them, will be found to favour the principles underlying the amendment of Professor Shah. I cannot understand how it is that the Congress, the predominantly majority party here, is not pressing this thing.

One Honourable Member stated yesterday that these are political matters and that political parties should not bring up such amendments. I was considerably surprised to hear it. Constitution making is the work of political parties. So far as the organisation to which I have the honour to belong, *viz*., the Congress we congressmen have given promises from many platforms to the teeming millions that so far as the means of production and the natural resources of the State are concerned, they will not be put into the hands of a favoured few. How can we go back on our word? After all this is a directive principle. I am not asking you to incorporate it so that the capitalists and the big purses of the country may not have the opportunity to work the mines and the minerals. This is only a directive principle. Are we not going to keep it as our goal that all means of productions and the gifts of Nature which belong to this vast country should belong to the State or to the community? I am sorry, Sir, that the bogey has been raised by the capitalists that if you talk like this they will cease to produce. I know the large majority of friends here will not be deterred by this bogey raised by the capitalists, because production is not for the welfare of the community. It is for the welfare of the capitalists. They produce for profits. Honourable Members of this House know it better than myself that they produce for profit and they will continue to produce as long as they make profit and, if not, they will not. So we should not be deterred by this slogan. As far as the Government of India is concerned,—somebody attributed it to the Prime Minister—it is said that after ten years we shall have nationalisation. To this, Sir, Ardeshir Dalal has stated, according to newspaper reports, that production is hampered because something was said by the Prime Minister of India.

Sir, in this Chapter and particularly in this article are we not going to suggest that ultimately we have to nationalise them, are we not going to suggest that is the aim of the nation, is the target of the nation? We stated in the August Resolution that land belongs to the tillers of the soil. You have here magnificent and sparkling words, social justice, political justice and economic justice. Very good and splendid words but they appear very far away from the toiling millions. Why not state here, not today, not tomorrow but in the distant future that the community will own what belongs to the community by the gift of nature and by the gift of God. I do not belong to the Socialist Party but I belong to the Congress to which many here belong. May I appeal to Dr. Ambedkar who claims to represent the down-trodden untouchables of the country not to wash away this hope from our hearts that in the future

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years the natural resources of the community may belong not to the privileged few but to the poor people of the country, for the good and benefit of all.

Shri S. Nagappa (Madras: General): Sir, this clause is the only clause where the poor man, the common man can find some hope for the future. Clauses (ii) and (iii) are intended for the benefit of the poor man. No doubt, it would have been better if this clause had been drafted in more unequivocal terms instead of in this ambiguous language. As a layman, as a common man, I can see some ray of hope for the future in these clauses. It is the aim of all honourable Members who have assembled here to socialise as early as possible. As long as these clauses stand, there is no possibility of capitalism thriving in India. I am very much thankful to the Drafting Committee and to the President of it in particular for having brought in these clauses and my only grievance is that they have not been drafted in more unequivocal language. Sir, the slogans today are municipalise utilities and nationalise industries and means of production, and unless and until these things are done, there is no hope for the common man. Today, land is concentrated in a few hands and the tiller finds himself in serious difficulties. A friend was moving an amendment for abolishing feudalism in India. When such are his feelings, you can imagine what would be the feelings of a man who has been teased for centuries and centuries. You know the conditions of the tenants in jagirs and zamindaries. They are expected to work for nothing for a number of hours and for a number of days, whereas in factories there are fixed hours. I am very glad, Sir, that in the Fundamental Rights there is a provision against beggar and forced labour. I would request the framers of the Constitution to see that every word of it is translated into action. There is no use having pious wishes or putting in high-sounding words.

With these words, I support the article.

Shri Brajeshwar Prasad (Bihar: General): May I speak, Sir?

Mr. Vice-President : I am very sorry. I think there has been sufficient discussion. Dr. Ambedkar.

The Honourable Dr. Ambedkar : Mr. Vice-President, Sir, of the many amendments that have been moved to this particular article, there are only four that remain for consideration. I will first take up the amendment of Mr. Krishnamoorthy Rao. It is a mere verbal amendment and I say straightaway that I am quite prepared to accept that amendment.

Then there remain the three amendments moved by my friend, Professor K. T. Shah. His first amendment is to substitute the words "every citizen" for the words "the citizens". Now, if that was the only amendment he was moving, I would not have found myself in very great difficulty in accepting his amendment, but he also proposes to remove the words "men and women equally" to which I have considerable objection. I would therefore ask him not to press this particular amendment on the assurance that, when the Constitution is gone through in this House and is remitted back to the Drafting Committee for the consideration of verbal changes, I shall be quite prepared to incorporate his feelings as I can quite understand that "every citizen" is better phraseology than the words "the citizens".

With regard to his other amendments, *viz*., substitution of his own clauses for sub-clauses (ii) and (iii) of Article 31, all I want to say is this that I would have been quite prepared to consider the amendment of Professor Shah if he had shown that what he intended to do by the substitution of his own clauses was not possible to be done under the language as it stands. So far as I am able to see, I think the language that has been used in the Draft it a much more extensive language which also includes the particular propositions which have been moved by Professor Shah, and I therefore do not see the necessity

for substituting these limited particular clauses for the clauses which have been drafted in general language deliberately for a set purpose. I therefore oppose his second and third amendments.

Mr. Vice-President : I shall now put the amendments to the vote, one by one.

Mr. Vice-President : The question is:

"That in clause (i) of article 31, the words 'men and women equally be omitted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (i) of article 31, the words 'that the citizens, men and women equally' have the right to an adequate' the words 'every citizen has the right to an adequate' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That for clause (ii) of article 31, the following be substituted:—

'(ii) that the ownership, control and management of the natural resources of the country in the shape of mines and mineral wealth, forests, rivers and flowing waters as well as in the shape of the seas along the coast of the country shall be vested in and belong to the country collectively and shall be exploited and developed on behalf of the community by the State as represented by the Central or Provincial Governments or local governing authority statutory corporation as may be provided for in each case by Act of Parliament'."

The motion was negatived.

Mr. Vice-President : The question is:

"That for clause (iii) of article 31, the following be substituted:—

'(iii) that there shall be no private monopolies in any form of production of material wealth, social service, or public utilities nor shall there by any concentration of means of production and distribution in private hands and the State shall adopt every means to prevent such concentration or accumulation'."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (iii) of article 31, for the word 'concentration' the words 'undue concentration' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (v) article 31, for the word 'abused' the word 'exploited' and for the words 'economic necessity' the word 'want' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (v) of article 31, for the words 'their age' the words 'their age, sex' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (v) of article 31, for the words 'to their age or strength' the words 'to their sex, age or health' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (v) of article 31, for the words 'that the strength and health', the words 'that the health and strength' be substituted."

The motion was adopted.

Mr. Vice-President : The question is:

"That Article 31, as amended, be part of the Constitution."

The motion was adopted.

Article 31, as amended, was added to the Constitution.

Mr. Vice-President : We shall now proceed to Article 31-A.

Article 31-A

Shri M. Ananthasayanam Ayyangar (Madras: General): Mr.Vice-President, Sir, Amendment No. 927 stands in my name, but Mr. Santhanam has given an amendment to this amendment, for substitution of this. I find that that language is better. With your permission, Sir, he may be allowed to move his amendment in the place of mine. If you want me to formally move my amendment, I will do so, but I am prepared to accept the substitution for 31-A. I am prepared to adopt whichever course you direct.

Mr. Vice-President : Let Mr. Santhanam move.

The Honourable Shri K. Santhanam : Sir, I beg to move:

"That after article 31, the following new article be added:—

'31-A. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'."

Sir, I need not elaborate the necessity for this clause. Many honourable Members had given similar amendments for village panchayats, but they had also attached to it conditions like self-sufficiency and other matters, which many of us did not consider desirable to be put into the directives. What powers should be given to a village panchayat, what its area should be and what its functions should be will vary from province to province and from state to state, and it is not desirable that any hard and fast direction should be given in the Constitution. There may be very small hamlets which are so isolated that even for fifty families, we may require a village panchayat; in other places it may be desirable to group them together so that they may form small townships and run efficient, almost municipal administrations. I think these must be left to the provincial legislatures. What is attempted to do here is to give a definite and unequivocal direction that the state shall take steps to organise panchayats and shall endow them with necessary powers and authority to enable them to function as units of self-government. That the entire structure of self-government, of independence in this country should be based on organised village community life is the common factor of all the amendments tabled and that factor has been made the principle basis of this amendment. I hope it will meet with unanimous acceptance. Thank you, Sir.

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment.

(At this stage Seth Govind Das rose to speak).

Mr. Vice-President : If you want to discuss anything, you can discuss after Prof. Ranga's amendment has been moved.

An Honourable Member : Prof. Ranga is not here.

Mr. Vice-President : I am on the horns of a dilemma. This amendment has been accepted. If I gave an opportunity to one speaker, then the whole question will have to be re-opened. I would value the advice of experts on this matter.

Shri M. Ananthasayanam Ayyangar : If you will permit me to say so, I shall only quote the procedure that is adopted in the House when it sits as a

Legislature. Even though a Member in charge of a Bill says he accepts an amendment, he only indicates the line of action for other Members to follow. They may go on speaking and he will always have a right of reply after they have spoken. Even to cut short the debate on certain matters which do not involve a principle, people would like to know what the attitude of the Government is. If it is found useless, they may not pursue that matter and it is for that reason that Dr. Ambedkar has said that he accepts the amendment. He still can reserve his reply after the speeches or debates are closed. I therefore request you to call upon other speakers who want to speak. It is a very important subject and every one would like to throw some light on it.

Mr. Vice-President : In that case, I shall call upon Mr. Prakasam to speak first.

Shri T. Prakasam (Madras : General): Mr. Vice-President, Sir, I feel happy that the Government have with grace accepted this amendment and agreed to introduce it in the Constitution. We should have tried to introduce this at the very beginning of the framing of the Constitution.

Shri Vishwambhar Dayal Tripathi (United Provinces : General): Sir, I do not know which Government he has referred to.

Shri T. Prakasam : I am referring to the Government as it is constituted today.

This is a subject which is so very dear to the country and to the Members of this House as is shown by the way in which they have intervened in the general debate and brought it to the forefront of the discussion that this should find a place in the Constitution itself. Dr. Rajendra Prasad, who is the President of the Constituent Assembly, himself expressed his opinion in favour of having village republics as the basis of the Constitution.

Shri Vishwambhar Dayal Tripathi : What has the Government to do with our discussions?

Mr. Vice-President : The reference was to the President of the Constituent Assembly and not to the Government.

Shri T. Prakasam : I have not referred to the Government. Thank you.

Dr. Rajendra Prasad has expressed his view in favour of making the village republic as the basis of the whole Constitution, which we are completing these days. On the 10th of May, Sir, Dr. Rajendra Prasad happened to express his views in this matter. The Constitutional Adviser, Sir B.N. Rau, when he dealt with this question, sympathised with the whole thing, but pointed out that it was too late to make any attempt to change the basis of the Constitution which has gone so far. I too agree, Sir, that if there was any mistake, the mistake was on our part in not having been vigilant enough and brought this before the House in proper time. When this was coming so late as that, I did not expect Dr. Ambedkar as Chairman of the Drafting Committee to be good enough to accept this.

Sir, a very serious situation was created by not making the village republic or the village unit as the real basis of the Constitution. It must be acknowledged on all hands that this is a construction which is begun at the top and which is going down to the bottom. What is suggested in this direction by Dr. Rajendra Prasad himself was that the structure must begin from the foundations and it must go up. That, Sir, is the Constitution which the departed Mahatma Gandhi indicated and tried to work up for nearly thirty years. Under these circumstances, it is very fortunate that this should come in at this stage, that this should be introduced and worked in a proper way. I must really congratulate Mr. Santhanam for having attempted to bring this

[Shri T. Prakasam]

amendment in this form so that all others who had tabled amendments, of whom I was also one, reconciled ourselves to accept this, because this gives opportunity to the people of every province and the whole of India to go on this basis and work up the whole thing, without interrupting the progress of the Constitution at this stage.

Sir, one of the distinguished friends of this House was remarking the other day to me, "why are you thinking of these village republics and all these things? The bullockcart days have gone; they will never come back." This was his observation. I may point out to that friend that the village republic which is proposed to be established in the country and worked is not a bullock cart village republic. The republic that would be established, Sir, under this resolution, under the orders of the Government as it were, would be a village republics which would use the bullockcarts, not for simply taking the fire-wood that is cut in the jungles to the towns and cities and getting some money for hire; these village republic would convert the work of the bullock carts to the work of carrying paddy and other produce which they produce in the village for their own benefit and for the benefit of the public. These village republics will also be serviceable to those men of ours who are now fighting in Kashmir. I was there the other day; I saw the way in which those friends in the battle field have been carrying on their work. Some of them said to us: "Well Sir, when you go back to the country, you please see that the prices of food-stuffs are reduced and that our people when they apply for small sites for habitation, they are secured." For all these things, the village republics will be of service to the military people in the best possible manner.

This is not a thing which should be looked upon with contempt, having forgotten our history and the history of the world. This is not the first time that this is introduced in our country. This is not a favour that we bestow upon our people by reviving these republics. When we fill the whole country with these organisations, I may tell you, there will be no food famines; there will be no cloth famine and we would not be spending 110 crores of rupees as we are doing today for the imports of food; this amount could be saved for the country. We have gone away far from the reality. These village republics will put a stop to black-marketing in a most wonderful manner. These village republics, if properly worked and organised on the basis of self-sufficiency, to which some may take exception, if the village is made a self-governing unit, it would put a stop to inflation also which the Government has not been able even to checkmate to any appreciable extent. This village organization will establish peace in our country. Today whatever the Government might be doing from the top here byway of getting food from other countries and distributing it, the food would not be distributed amongst the masses ordinarily through the agencies which we have got either in the Centre or in the provinces. All that trouble would be solved immediately so far as this business is concerned. Let me tell you above all that Communism—the menace the country is facing—we are seeing what is going on in China, we saw what was done in Czechoslovakia and we know what the position is in Burma, we know what the position is even in our own country with regard to Communism. Communism can be checked immediately if the villages are organized in this manner and if they are made to function properly. There would be no temptation for our own people to become Communists and to go about killing our own people as they have been doing. For all these reasons I would support this and I am very anxious that this must be carried out in all the provinces as quickly as possible, soon after the Constitution is passed, and I am seeing today the light and prosperity before the country when the Constitution is passed and when this village organization comes into existence.

Shri Surendra Mohan Ghose (West Bengal : General): Sir I am grateful to you for giving me an opportunity to express my feeling on this amendment moved by my honourable Friend Mr. Santhanam. Sir, you will find there is another amendment No. 991 which stands in my name almost identical with the present amendment which has been moved by my honourable Friend. I am glad that such an agreed amendment has been moved by my honourable Friend, Mr. Santhanam and that it has been accepted by the Honourable Law Minister, Dr. Ambedkar.

Sir, in my opinion the meaning of this Constitution would have been nothing so far as crores and crores of Indian people are concerned unless there was some provision like this in our Constitution. There is another point also *viz.*, for thousands and thousands of years the meaning of our life in India as it has been expressed in various activities, was this that complete freedom for every individual was granted. It was accepted that every individual had got full and unfettered freedom; but as to what the individual should do with that freedom there was some direction. Individuals had freedom only to work for unity. With that freedom they are to search for unity of our people. There was no freedom to an individual if he works for disruption of our unity. The same principle was also accepted in our Indian Constitution from time immemorial. Every village like the organic cells of our body was given full freedom to express itself but at the same time with that freedom they were to work only to maintain and preserve the unity of India.

Sir, our village people are so much familiar with this system that if today there is in our Constitution no provision like this they would not have considered this as their own Constitution or as something known to them, as something which they could call their own country's Constitution. Therefore, Sir, I am glad and I congratulate both my friend the Honourable Mr. Santhanam and the Honourable Dr. Ambedkar on moving this amendment as well as for acceptance of the same. Sir, I commend this.

Seth Govind Das (C. P. and Berar : General): *[Mr. President, very few speeches are being made now-a-days in this House in Hindi. I would, therefore, resume my practice of speaking in Hindi unless of course I have something to explain to my south Indian friends which requires my speaking here in English.

During the course of the speech he made while presenting this Draft to the House Dr. Ambedkar made some remarks about villages which caused me and, I believe, a great majority of the members of this House, great pain. It is a matter of deep pleasure to me that he has at last accepted the amendment moved by Shri Santhanam. We need not complain if one comes to the right course, though belatedly.

I belong, Sir, to a province in which perhaps the greatest progress has been made in respect to this matter. Our village Panchayats, our judicial Panchayats, and our laws for Janapadas are the talk of the whole of India today. There was a time when our province was regarded as a very backward province. But today the whole country will have to admit that our province though small in size, has given a lead in many matters to the other provinces of the country. So far as the scheme of village Republics is concerned, it is an undisputed fact that our province has progressed more than any other province towards its fulfilment.

Ours is an ancient, a very ancient country and the village has had always an important position here. This has not been so with every ancient country. In Greece, for instance, towns had greater importance than villages. The

* [ ] Translation of Hindustani speech.

[Seth Govind Das]

Republics of Athens and Sparta occupy a very important place in the world history today. But no importance was attached by them to the villages. But in our country the village occupied such an important position that even in the legends contained in most ancient books—the Upanishads—if there are descriptions of the forest retreats, of the sages, there are also descriptions of villages. Even in Kautilya's Arthasastra there are to be found references to our ancient villages. Modern historians have also admitted this fact. We find the description of our ancient village organisation, in 'Ancient Law' by Mr. Henry Man, 'Indian Village Community' by Mr. Baden Powel and in 'Fundamental Unity of India' by Shri B. C. Pal. I would request the members of this House to go through these books. They will come to know from these books the great importance the villages have had in India since the remotest times. Even during the Muslim Rule villages were considered of primary importance. It was during the British regime that the villages fell into neglect and lost their importance. There was a reason for this. The British Raj in India was based on the support of a handful of people. During the British regime Provinces, districts, tahsils and such other units were formed and so were formed the Talukdaris, Zamindaris and Malguzaris. The British rule lasted here for so many years only on account of the support of these few people.

Just as Mahatma Gandhi brought about a revolution in every other aspect of this country's life, so also he brought about a revolution in the village life. He started living in a village. He caused even the annual Congress Sessions to be held in villages. Now that we are about to accept this motion I would like to recall to the memory of the members of this House a speech that he had delivered here in Delhi, to the Asiatic conference. He had then advised the delegates of the various nations to go to Indian villages if they wanted to have a glimpse of the real India. He had told them that they would not get a picture of real India from the towns. Even today 80 per cent of our population lives in villages and it would be a great pity if we make no mention of our villages in the Constitution.

I support the amendment moved by Honourable K. Santhanam. I hope that the Directive Principles laid down in the Constitution would enable the provinces to follow the lead given by the Central Provinces in the matter and I hope a time will come when we shall be able to witness the ancient glory in our villages.]

Shri V. I. Muniswamy Pillai (Madras : General): Mr.Vice-President, Sir, by my Honourable Friend Mr. Santhanam moving this amendment and the Chairman of the Drafting Committee expressing that he is going to accept it shows the real feeling of the Sovereign Body towards their less fortunate brethren living in the villages. My Honourable Friend Mr. Prakasam referred to the statement made by the revered leaders Rajendra Prasad and Mahatma Gandhi. But we know it for a reality that the villages are in rack and ruin, and if there is to be any amenities or self-government, it is to the villages that the Sovereign Body must give them. The other day when I made a speech on the Draft Constitution, I pointed out that there is no provision to give the rural areas any choice of self-government. Now, under this amendment we bestow a certain amount of power to make the villages self-contained and to have self-government there. Sir, I am sure the seven lakhs of villages in the whole of India will welcome the provision of this amendment in this Constitution. Sir, it is with the revenue that is derived from the rural areas that it has been possible to create towns, with all amenities therein. But the man who gives the revenue by way of taxes could not get even the rudiments of amenities, due to a citizen. I feel that by accepting this amendment we will go a long way to re-construct

the villages that have been allowed to go to rack and ruin for centuries together. If the pies are taken care of, the rupees will take care of themselves. So I feel that by having this amendment, we are going a long way towards reconstructing our villages which are in such dire necessity of such reconstruction today.

Dr. V. Subramaniam (Madras : General): Mr. Vice-President, when our Mother India delivers her Constitution, if there is any living cell in the Constitution, it will be this village panchayat amendment which has been brought forward by my Honourable friend, Mr. Santhanam. It is a well-known fact that India is standing today as a self-governing unit in the world because of this living cell in our body politics—the village panchayat. Today, if we want to make the country strong and self-sufficient in every respect, this clause in the Constitution or in the Directive principles is very necessary.

Now, there has been some controversy about self-sufficiency. My interpretation when we speak of a village being self-sufficient is this. It may produce, say ground-nut in large quantities, and it may export it, even though it may be forced to import Dalda and other substances for the needs of the people in the village. By saying that it is self-sufficient, we only mean that it may grow all the articles that it can and also import what is necessary, from the neighbouring villages. That is my interpretation. But these are matters to be worked out in detail by the village panchayats themselves.

It is clear that as far as this amendment is concerned, there can be no two opinions about it. This amendment must be carried, and in our future constitution, much more powers must be given to the villages. As a matter of fact, we do not know how many carpenters there are in our land. If we have the panchayats, we need go only to their records and pick up the number of carpenters in every village. These panchayats will serve a very useful purpose. This clause is very essential, and I support this amendment.

Shri Satyanarayan Sinha (Bihar : General) : Sir, we have had enough discussion, and after Shri Bharathi, I would like to move for closure.

Shri L. Krishnaswami Bharathi (Madras : General): Mr.Vice-President, Sir, I congratulate the Honourable Mr. Santhanam for moving and Dr. Ambedkar for agreeing to this amendment. I must confess that I am not fully satisfied with this amendment, for the very simple reason that even today even under the present Constitution, I think the Provincial Governments have enough powers to form village panchayats and operating them as self-governing units. But to the extent to which it goes, I must express my satisfaction. It must be remembered that this is in the directive principles, and I see no reason why the idea of self-sufficiency should not have been accepted by Mr. Santhanam. The reasons that he gave for not accepting that principle are not at all convincing. In fact, two or three Honourable Members—Mr. Ranga, Shri Ananthasayanam Ayyangar, and Mr. Prakasam have given amendments with these ideas. Mr. Ananthasayanam Ayyangar's amendment says there is great need for effective decentralisation of political and economic powers. After all, what the amendment seeks to give is only political independence. Political independence apart from economic independence, has no meaning. The idea behind the Directive principles is to emphasis the way in which we want the country to function, and for that we must make it quite clear to the whole world that economic democracy is important and for that decentralisation of economic power is important. It is that aspect of the matter which Gandhiji emphasised. Decentralization both in the political and economic sphere is absolutely essential if India is to function as a democracy.

[Shri L. Krishnaswami Bharathi]

In fact, speaking at the Asian Relations Conference, Mahatmaji said pointing out to the City of Delhi:—

"This is not India. You people are seeing Delhi—this is not India. Go to villages; that is India, therein lives the soul of India."

Therefore, I do not know why they should fight shy of 'self-sufficiency'. It has been sufficiently explained by Mahatmaji, and if it is necessary I would like even to say some words from his speeches.

The Honourable Shri K. Santhanam: May I point out to the Honourable Member that self-government is not merely political? It may be economic or spiritual.

Shri L. Krishnaswami Bharathi: I quite understand it and that is the reason why it should be made clearer. If self-government includes that, it is much better that we explain it because that explanation is very necessary. I would very much like the word "self-sufficiency" in the Gandhian sense of the word, self-sufficiency not in all matters, let it be remembered, but in vital needs of life, self-sufficiency in the matter of food and clothing as far as possible. That is what Mahatmaji said. It does not mean absolute independence. Sir, I would ask leave to read from Mahatmaji's articles certain important portions which will clear up the matter. This is what Gandhiji wrote:—

"My idea of Village Swaraj is that it is a complete republic, independent of its neighbours for its vital wants and yet interdependent for many others in which dependence is a necessity."

An Honourable Member asked, "Well, what can you do? Some villages produce only paddy, they cannot have self-sufficiency". Is it such an impossible proposition? Gandhiji was emphatic in saying that he was not at all suggesting that the village should be independent of all these things, but in certain matters you must have self-reliance, the basic idea being, *"no work, no food"*. Now the villagers think that as it is a Swaraj Government, *khadi* and food will flow from the heavens as *manna*. Gandhiji's idea in this self-sufficiency is, "Don't expect anything from the Government. You have got your hands and feet; work; without work you will have no food. You can produce your own cloth, you can produce your own food. But if you do not work, you shall have no food, no cloth." That is the basic idea of decentralization and economic democracy. And if the villagers are to have that idea, we must put it here and tell them about self-sufficiency, "Do not expect any thing from the Government. Who is the Government? After all you constitute the Government. You must work, you must produce. Do not depend on these mills. Go on with your *charkha*, make our own food". That is the basic idea of self-sufficiency and decentralization and economic democracy.

Mahatmaji said :—

"My idea of Village Swaraj is that it is a complete republic, independent of its neighbours for its vital wants, and yet interdependent for many others in which dependence is a necessity. Thus every village's first concern will be to grow its own food crops and cotton for its cloth. It should have a reserve for its cattle, recreation and playground for adults and children. Then if there is more land available, it will grow *useful* money crops, thus excluding *ganja,* tobacco, opium and the like. The village will maintain a village theatre, school and public hall. It will have its own waterworks ensuring clean supply. This can be done through controlled wells and tanks. Education will be compulsory upto the final basic course. As far as possible every activity will be conducted on the co-operative basis. There will be no castes such as we have today with their graded untouchability. Non-violence with its technique of *Satyagraha* and non-cooperation will be the sanction of the village community..."

(At this stage Mr. Vice-President rang the bell).

Sir, I think there are only a few more lines of Mahatmaji's picture of life. With your leave I should like to finish it.

"...There will be a compulsory service of village guards who will be selected by rotation from the register maintained by the village. The government of the village will be conducted by the *Panchayat* of five persons, annually elected by the adult villagers, male and female possessing minimum prescribed qualifications."

This is a rough idea of what Gandhiji felt, and therefore, in my opinion it is very necessary that this sovereign body should enunciate and give its views on this fundamental tenet of Mahatma Gandhi, his idea being that there must be decentralisation and the village must function as an economic unit. Of course, the Honourable Mr. Santhanam said that it is included. I only wanted that it should be made more explicit so that Mahatmaji's soul will be very much pleased. He said that India dies if the villages die, India can live only if the villages live.

The Honourable Dr. B. R. Ambedkar : Sir, as I accept the amendment. I have nothing more to add.

(An Honourable Member rose to speak.)

Mr. Vice-President : In this matter my decision is final. I have not yet found anybody who has opposed the motion put forward by Mr. Santhanam. There might be different ways of praising it, but at bottom and fundamentally, these speeches are nothing but praising the amendment.

The question is:

"That after article 31, the following new article be added:—

'31-A. The State shall take steps to organise village panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government'."

The motion was adopted.

Mr. Vice-President : The question is:

"That the new article 31-A stand part of the Constitution."

The motion was adopted.

Article 31-A was added to the Constitution.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 23rd November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 23*rd November,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

DRAFT CONSTITUTION—*(Contd.)*

Article 32

Shri Syamanandan Sahaya (Bihar : General): Sir, I will move amendments Nos. 933 and 934 together with your permission. I move:

"(i) That in the article 32 after the word 'education' a comma and the words 'to medical aid' be added; and

(b) that for the words 'of undeserved want' the words 'deserving relief' be substituted."

This part deals with directives to the Government in power and the article deals with different aspects of social relief and other amenities which the State should strive to secure for the well being of the people. These include the right to work, education, public assistance in case of unemployment, old age, sickness, disablement and other "cases of undeserved want". The acceptance of my amendment would give the State an added responsibility of medical relief also.

In the second amendment, although the words "undeserved want" may have been used in other constitutions, I submit that the words "deserving relief", although not new to the language of constitutions, expresses the idea better and should be accepted.

With the conditions of health and the figures of mortality in this country as also the duration of life according to actuarial statistics I submit that special attention should be devoted to medical aid.

I do not think the amendment requires much argument to support it. Sir, I move.

Shri H. V. Kamath (C. P. & Berar: General): Mr. Vice-President, I move my amendment No. 936 as amended by my amendment No. 69 in List II. If the two are taken together, my intention will be very clear. In effect my amendment will substitute the word 'State' for the word 'public' occurring in this article. I find that provision as regards food, clothing, shelter and medical aid are covered by article 38 which seeks to raise the standard of living and provide for public health and such other amenities. I think that my friend Mr. Syamanandan Sahaya's amendment as regards medical aid is also covered by the same article. There is no need to include these provisions as regards food, clothing, medical aid, etc. specifically in this article.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I oppose the amendments.

Mr. Vice-President (Dr. H. C. Mookherjee): I put the amendments to vote. Amendments Nos. 933 and 934, and 936 as further amended, were negatived,

Mr. Vice-President : I shall now put article 32 to the vote of the House.

The question is:

"That article 32 stand part of the Constitution."

The motion was adopted.

Article 32 was added to the Constitution.

Article 33

Mr. Vice-President : The House will now take up article 33 for consideration.

Shri V. I. Muniswamy Pillai (Madras: General) : I am not moving my amendment No. 940 as the subject-matter relates to the Schedules.

Mr. Vice-President : I shall now put article 33 to the vote of the House. The question is:

"That article 33 stand part of the Constitution."

The motion was adopted.

Article 33 was added to the Constitution.

Article 34

Mr. Vice-President : The House will now take article 34 into consideration.

(Amendments Nos. 938 to 947 were not moved.)

Shri Mahavir Tyagi (United Provinces: General): Sir, I beg to move:

"That article 34 be numbered as 34(1) and the following new clause be inserted after clause (1) so re-numbered:

'(2) The State shall encourage the use of Swadeshi articles and promote cottage industries, especially in the rural areas with a view to making as far as possible those areas self-sufficient'."

In moving this amendment I wish to bring to the notice of the House the fact that the condition of rural areas is very bad today. In fact rural areas have been depleted, and deliberately deprived and made devoid of all their old initiative and incentive to work. The conditions in the villages are so bad that the artisan classes have all practically come to the towns. Even a barber, if he is good at razor, does not stay in the village but goes to towns where more money can be had. Attendance on villagers does not enable him to earn his daily bread. He goes to the town and opens a saloon. The village carpenter also does the same; if he knows his job well. He goes to town and easily earns Rs. 5 or 6 a day. Masons do likewise and also the tailors. All the craftsmen flock to towns abandoning their village homes. I want to put it before the House that, under these conditions, when the villagers have been reduced to the position of carrying their dirty clothes to the town to be washed, what will happen to three-fourths of our population living in the villages? We have put it on record that what we want is economic democracy. How will economic democracy come about in the existing state of affairs in the rural areas?

We have given the villager only the right of vote. And this too we have given him only to take back after every five years—he will give us his vote. He is only the custodian of the right of vote; and we being his leaders he must return the vote to us at the time of elections. We are always their leaders. Sir, I have had experience of Legislative Assemblies for the last ten or twelve years and I know that we are not treating the villagers fairly. All budget amounts are mostly spent in towns. Only in the towns you have electricity and all sorts of other amenities. Their roads are cemented. There is public health only in the towns. But the villagers are totally neglected. Every man who has the least initiative comes to the towns. All intelligence has come away and now it is only the sluggish people who are left in the villages. Anyone who has passed the Matriculation Examination comes to the towns and employs himself in some service or other. So the villages are

fast going to ruination. Now, Sir, it is very good to say that we want economic equality and economic democracy but cannot we on this occasion direct the future governments of the country that this is the line through which we want to achieve our objective of economic democracy? I am not opposed to big concentrations of industries in big towns. In fact, these big industries have been drawing muscular man-power from the villages. Villages have been their recruiting grounds. Villagers come and employ themselves in these big mills only to demoralise themselves in the bad atmosphere in towns. That is the reason why the Britishers purposely kept them weak and poor from all points of view. Initiative they have been deprived of, because otherwise they would not work as mere labourers. Sir, all the villagers cannot come to the towns. Even if you go on increasing the number of industrial towns, you cannot accommodate the vast populations living in the rural areas. They will have no housing in the towns. The purpose of my placing this amendment before you is that instead of the muscular power going to the machine, I want to carry the machines to the sources of muscular power. I want the machines to be taken to the villages so that the villagers who are living in their own sweet homes in their own healthy environments may not be snatched away from their families. At present, Sir, the pressure on land has become too much. The House may be surprised to know that in 1891 only 61 per cent of our population were employed on agriculture. In 1901, it was 66 per cent and in 1931 it was 72 per cent. Land has been torn into tiny fragments and agriculture has become totally uneconomic. If things go on like that, most of the villagers will come to the towns. We are enjoying our life in towns, while the villagers in whose name we come here are deprived of even their ordinary privileges of citizenship. Therefore, Sir, I submit that this amendment may kindly be accepted. Our Party, the Congress Party, has been propagating Swadeshi and cottage industries since its very inception. But now that the time has come for making our constitution, if we ignore the villagers that will be disappointing to the village people. I do not want to take any more time of the House because most of the Members of this honourable august House already appreciate the usefulness of the amendment that I am bringing forward. I hope honourable Members will consider the feasibility of giving to the world a new type of social revolution. In Russia, they say, there is already achieved economic democracy, but this economic democracy in Russia has concentrated all power in the hands of the State, with the result that the State has become autocratic. If you want to combine political democracy with economic democracy and translate into life Dr. Ambedkar's maxim, "One man, one unit", then you should make the villages self-reliant and self-sufficient. Otherwise the millions who are unemployed in the rural areas will never enjoy the fruits of freedom; they will remain slaves of the townsmen as they are today. Political consciousness and patriotism will come only when they are economically contented. The way to do this is to give them cottage industries so that they can live happily with their families in their own happy surroundings. It is only then that they can exert some influence on the government that be and contribute towards the progress of the country. With these words, Sir, I move this amendment and I hope the House will accept it.

Mr. Vice-President : I understand that there is an amendment to this amendment by Mr. Ramalingam Chettiar. Do you propose to move it?

Shri T. A. Ramalingam Chettiar (Madras: General): Sir, I gave notice of an amendment, but I would like, Sir, that it be altered a little, as this altered amendment is more likely to be accepted. Instead of the amendment of which I have given notice, I would move with your permission that at the end of

[Shri T. A. Ramalingam Chettiar]

article 34 itself we add as follows :

"And in particular the State shall endeavour to promote cottage industries on co-operative lines in rural areas."

If you will permit me, I will move that amendment, Sir.

Mr. Vice-President : Do you want an addition to the article which has been already accepted and passed?

Shri T. A. Ramalingam Chettiar : This is the article which is under consideration now.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, there is an amendment, standing in the name of Shri Gupta Nath Singh which is exactly the same as the amendment now proposed to be moved. The amendment number is 954.

Shri T. A. Ramalingam Chettiar : What I want to move is in the place of Mr. Tyagi's amendment.

Shri Amiyo Kumar Ghosh : The new clause 34-A which is sought to be moved is exactly the same as this. It says:

"The state shall endeavour to develop and promote cottage industries and make the villages self-sufficient as far as possible."

An Honourable Member : Are two persons permitted to address the House at the same time?

Mr. Vice-President : Two persons are not speaking. I am afraid you are making a mistake. Mr. Ghosh should have resumed his seat.

Mr. Chettiar, have you moved your amendment?

Shri T. A. Ramalingam Chettiar : That is the amendment, Sir.

Mr. Vice-President : Mr. Ghosh, what is it that you want to say? Please come to the mike.

Shri Amiyo Kumar Ghosh : Mr. Vice-President, what I was submitting was that there is already an amendment (No. 954) to the same effect and that instead of moving an amendment to Shri Mahavir Tyagi's amendment, it is better that we should take the amendment No. 954, which is to the same effect. I do not see why we should move this amendment over the amendment of Shri Mahavir Tyagi.

The amendment which is now going to be moved by my friend is to the effect that the State shall endeavour to develop and promote cottage industries etc. as an amendment to Shri Mahavir Tyagi's amendment, but I submit that when there is already an amendment standing in the name of Shri Gupta Nath Singh to the same effect that the State shall endeavour to develop and promote cottage industries and make the villages self-sufficient as far as possible, there is no need of moving this amendment. We can therefore take up amendment No. 954 for discussion and if it is acceptable to the mover, then we can accept it and put it as clause 34-A.

Mr. Vice-President : The amendment of Mr. Ramalingam Chettiar runs as follows:

"And in particular the State shall endeavour to promote cottage industries on co-operative lines in rural areas."

That is the language of the amendment moved by Mr. Chettiar. Therefore, it is in order. Now the article is open for general discussion.

Shri T. A. Ramalingam Chettiar : Mr. Vice-President, Sir, there is no doubt about the general feeling in the country that cottage industries ought to be encouraged. The only point I want to make is that so far the cottage industries have not been able to make headway for two reasons. One is the competition with the imported and mill-made goods and the other the want of organisation to help the cottage industries. Raw materials have to be supplied, wages have to be paid and above all, marketing has to be arranged. It is on the rock of marketing that most of our cottage industries have floundered. An

organisation for the purpose of undertaking these things is necessary and so far we have been able to find only two methods, either the introduction of master capitalists who will exploit labour or co-operative societies. Of course, it is not the intention of any of us that we should encourage these master capitalists, who practically exploit the village labourers and even town labourers. So the only method that is available and that is open to us is the formation of co-operative societies to undertake the supply of raw materials and the marketing of the produce. It is on that account, Sir, that I have ventured to move this amendment and I hope the House will accept it unanimously.

Shri H. V. Kamath : Mr. Vice-President, Sir, I am happy that articles 34, 32 and 31 have been incorporated in this Part dealing with directive principles of state policy. If the provisions in these articles are going to be seriously implemented and Government will really and in earnest take action in accordance with the provisions of these articles, I have no doubt that they will provide a new charter, the charter of a new life for the exploited, the disinherited and the under-privileged, and they will provide the basis or the framework for the blue-print of economic and social democracy in our country. I was very much heartened to hear Dr. Ambedkar saying the other day in this House that the Constitution seeks to lay down the ideal of economic democracy in this country. Indeed, Sir, that is the ideal we have got to strive for in this country. It may be argued that it is a vague idea. What is economic democracy and what is social democracy? Pandit Nehru, if I remember aright, when he moved the Objectives Resolution in this House hoped that our country along with the rest of the world would move towards socialism, though in his own mind there were doubts as to what democracy meant or political democracy meant or economic democracy meant. But, Sir, article 30 says that we will have social, economic and political justice. Is it not far better to say that we will have political, economic and social democracy, rather than mere justice, which is an abstract conception? (*Interruption*)

This concept of economic and social democracy has formed the basis, the content of most Congress resolutions that have been passed since 1936; especially, Sir, I would refer to the resolution passed at the Meerut session of the Congress, which gives a definite meaning to this concept of economic and social democracy. Dr. Ambedkar said that to his mind, political democracy means one man, one vote; economic democracy means one man, one value. I, Sir, would say that social democracy, to my mind, means: all men, one class; all men one caste; and I hope, Sir, that we are moving towards the creation of a casteless and classless society which Mahatma Gandhi envisaged for the social order in India.

Here, Sir, political democracy we have now secured. Through experience, not merely here, not merely in Europe, not merely in America, but all over the world, we have realised today that political democracy is not enough; unless you translate this political freedom, this political democracy into the life of the common man in economic and social terms this political democracy will not work and political democracy will be dead.

That is why, when democracy is opposed or resisted, it gives rise to a totalitarian form of Government. If political democracy is allowed to evolve, to grow, into economic, social democracy, then we would not have strife, we will not have wars, we will not have a totalitarian form of Government. Even today, we see the world is half slave and half free. In Asia and Africa vast tracts of land are under colonial rule. That is why this movement of communism is growing a pace. You may call them communist bandits or communist fellow travellers. It is no use dubbing them and calling them names. Unless

[Shri H. V. Kamath]

you change your exploiting social order into a freer order, this movement for violently ending the social order will continue. Therefore, we should take heed be times and try to establish in our country economic and social democracy. Here, Sir, in article 34 we have got an important provision. It is stated, "The State shall endeavour to secure, by suitable legislation or economic organisation or in any other way, work etc.....". I am glad that this has been incorporated. We have got three alternatives or all of them: legislation, organisation or in any other way. I hope, Sir, the Government will take advantage of this and act up to it and see that in accordance with the terms of the article, all workers, industrial or otherwise, are secured work, a living wage and a decent standard of life. We want a society of workers; every one must work. We should inscribe on the portals of our temple of democracy that he who will not work shall not eat: No work, no food. In the Bible this is laid down. Sir. In the Gita, it is said, he who eats without sacrifice, without work, he is a thief; *(Stan Ev sa:)* he steals from society. We must therefore lay down this concept that work must be compulsory, work must be obligatory. In article 32, it is said that the State shall secure the right to work; article 34 goes further and says, that the State shall secure work. There are millions of people in India today who want to work, but do not get work. There are a few parasites who can work, but do not want to work. As Bernard Shaw has said, at one end we have got men with appetites but no dinners; at the other, we have men with dinners, but no appetites. This social order is a House divided against itself. So long as this House divided continues, there will be no peace in the world; there will be no happiness in the world. We will have violent movements; we will have desperate men armed with bullets, armed with bren guns, trying to overthrow the social order. You cannot entirely blame them; you cannot find fault with them only; the fault lies also with those of us who want to perpetuate the exploiting social order. The answer to the bullet and bren gun is not the tank and the bomber as we see in Malaya; the answer is a change in the social order. I hope these articles will be implemented by the Government that is going to take office in the new India of the future, and that Government will try to establish economic and social democracy.

I would only make one more observation. To India through the ages has been given the mission of preaching the noble and sublime ideal, the concept of spiritual democracy, of which political, social and economic democracy are mere off-shoots. If true spiritual democracy takes root in our society, there is no doubt that we shall show to humanity a new way of life, and if all other countries in the world have tried to establish economic and social democracy by violence, by disorder, by strife, we can make a beginning here and go forward and try to achieve this new order.....

Mr. Vice-President : I am afraid that you are taking too much time over the amendments.

Shri H. V. Kamath : I am speaking on the article also.

Mr. Vice-President : You have sufficiently explained the article.

Shri H. V. Kamath : I have finished, Sir. We in our country must try to bring about this new order by methods of peace and non-violence and thus show a new way to the world. Otherwise, the present order, exploiting as it does, will perish, consumed in its own fires. But I hope out of the ashes will rise like unto the Phoenix of old, a new order with the light of morning in its eyes.

Shri S. Nagappa (Madras: General): Sir, I do not want to take the time of the House; I just want to make an amendment. After the words "to all

workers, industrial", the word "agricultural" may be added. Sir, I need not say that the bulk of the working population consists of agricultural workers.

Mr. Vice-President : This is out of order.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, as there is a considerable amount of feeling that the Directive Principles should make some reference to cottage industries, I am agreeable in principle to introduce in article 34 some words to give effect to the wishes of the Members of this House. I am therefore prepared to accept the amendment moved by my friend Mr. Ramalingam Chettiar, subject to the substitution of one or two words. One substitution that I would like to make is this. After the words "cottage industries on" I would like to add the words "individual or". I would like to substitute his word 'lines' by the word 'basis'. So that the amendment would read as follows:

"And in particular the State shall endeavour to promote cottage industries on individual or co-operative basis in rural areas."

That, I think, would meet the wishes of most of the Members who are particularly interested in the subject.

I may also add that I am quite agreeable to accept the amendment moved by Mr. Nagappa that the word 'agricultural' be added after word 'industrial'.

Mr. Vice-President : That was not allowed.

The Honourable Dr. B. R. Ambedkar : I have no objection if you allow that. I think Mr. Nagappa's suggestion that agricultural labour is as important as industrial labour and should not be merely referred to by the word 'otherwise', has some substance in it. However, it is a matter of ruling and it is for you to decide.

Shri T. A. Ramalingam Chettiar : I accept Dr. Ambedkar's amendments.

Shri L. Krishnaswami Bharathi : (Madras: General): Sir, may I suggest, that we may stop with the word cottage industries and omit the rest. Why do you want the words 'on individual or co-operative basis'? There is no point in adding these words unless you want to lay special emphasis on co-operative basis. I would like these words 'on individual or co-operative basis' to be omitted.

The Honourable Dr. B. R. Ambedkar : May I explain, Sir, I find among the Members who are interested in the subject, there are two divisions: one division believes in cottage industries solely on a co-operative basis; the other division believes that there should be cottage industries without any such limitation. In order to satisfy both sides, I have used this phraseology deliberately, which, I am sure, will satisfy both views that have been expressed.

Shri M. Ananthasayanam Ayyangar : (Madras: General): I do not want to speak.

Mr. Vice-President: I think we have discussed this matter sufficiently. We shall pass on to the actual voting.

Shri Mahavir Tyagi: In the hope that this will all be done on the basis of self-sufficiency, I accept the amendment to my amendment as finally proposed by Dr. Ambedkar and in that case I shall have to withdraw mine.

The amendment was, by leave of the Assembly, withdrawn.

Shri Amiyo Kumar Ghosh : Sir, I want to know whether 'agricultural workers' have been included or not.

Mr. Vice-President : It has not been included but I am quite prepared to go back on my ruling provided the House as a whole, without any dissention, accepts the suggestion of Dr. Ambedkar.

Honourable Members : Yes.

Mr. Vice-President : Then I shall put the amendment of Shri Ramalingam Chettiar as amended by Dr. Ambedkar to the vote.

The amendment, as amended, was adopted.

Mr. Vice-President : Now I put the amendment as further modified by Mr. Nagappa.

The amendment, as further amended, was adopted.

Mr. Vice-President : Now the motion before the House is:

"That article 34, as amended in the manner just mentioned, should form part of the Constitution."

The motion was adopted.

Article 34, as amended, was added to the Constitution.

Article 34-A

Mr. Vice-President : Now we come to amendment No. 952 to article 34-A.

(Amendment No. 952 was not moved.)

Amendment No. 953—Shri Ranbir Singh Chaudhari.

Chaudhari Ranbir Singh (East Punjab: General): I am not pressing it but want to speak on the article.

Shri M. Ananthasayanam Ayyangar : This amendment is covered by article 34 as amended. These are all matters not so much for a Constituent Assembly to introduce in the Constitution but for legislation at the Centre or in the provinces. I therefore think this need not be moved. Even at present usury is restricted in the provinces. A percentage for interest is fixed.

Mr. Vice-President : As the wording is different Shri Ranbir Singh Chaudhari has a right to move his amendment but whether he will do so or not lies with him. I hope he will not take up too much time of the House. You ought to remember that our President wants that we should finalize our Constitution by the 9th December. Then there was some talk about moving it further back. We owe a certain duty to the country and I have been receiving a series of wires so much so that sometimes I am awakened in the middle of the night, throwing the blame on us.

Chaudhari Ranbir Singh : *[Mr. Vice-President, I wanted to make a few observations on the general article first and that is why I rose a little while ago to speak. But as I did not then get an opportunity to speak, with your permission, Sir, I would like to express my views now within a minute or two. I have already said that I would not press my amendments. Besides, there is one thing, more. As Shri Ayyangar has stated.....]

Mr. Vice-President : Kindly speak on the amendment.

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* [ ] Translation of Hindustani Speech.

Mr. Z. H. Lari (United Provinces: Muslim): Sir, on a point of order. Can any person be allowed to address the House unless he formally moves a motion?

Mr. Vice-President : You are right.

(Addressing Mr. Chaudhari) You will first of all move the motion and then address the House.

Chaudhari Ranbir Singh : My new article reads thus:—

"That after the article 34, the following new article 34-A be added:—

'34-A. (a) The State shall endeavour to secure by suitable legislation or economic organisation or in any other way the minimum economic price of the agricultural produce to the agriculturists.

(b) The State shall give material assistance to national co-operative organisations of the producers and consumers.

(c) Agricultural insurance shall be regulated by special legislation.

(d) Usury in every form is prohibited'."

Mr. Vice-President : May I take it that you are moving this amendment formally? I suppose this is done.

Mr. Z. H. Lari : He says, it reads thus. He has not moved his amendment.

Mr. Vice-President : Suppose, you waive that point. Now, Mr. Chaudhari, you can address the House.

Chaudhari Ranbir Singh : *[Mr. President, I am afraid that one class remains still to whom the provisions of article 34, as it stands now or even with the amendment of Shri Nagappa as accepted by Dr. Ambedkar, would not afford any protection and whose economic interests would, therefore, remain unsafe guarded. My reference is not to the class of landlords. The fact on the contrary is that I do not desire to speak for that class at all. My reference is to the class of peasant proprietors of the Punjab who neither exploit anybody nor like to be exploited by anyone. Speaking for the peasantry. I would like to remark that so long as we do not fix some economic price of the produce, they will continue to suffer from a grave injustice. The duty of the State today is not merely to maintain law and order but also to resolve the economic complexities, the solution of which is the main problem of the peasantry at present. Sometime back the prices of gur and other commodities fell so much that they came down to one-fourth of what they were four or five months before. Ours is an agriculturist country and in this country such violent disturbances of the price level cannot but radically disturb the agricultural economy. I do not want to press this very much because I know that this point is covered by the previous article. But these matters should be kept in mind. My purpose is to emphasise that without fixing the economic price of agricultural products, there can be no stability in the economic life of the agriculturists and it is very necessary to make it stable. The other three parts also lend some support to this view. Since a good many members of the House think that the purpose of my amendment is covered by the previous article, I do not move it.]

Mr. Vice-President : I shall not, therefore, put it to the vote. The next amendment is that standing in the name of Mr. Guptanath Singh.

Shri Guptanath Singh (Bihar: General): Sir, My purpose, I see, has been served by the amendment of Dr. Ambedkar to a great extent, I, therefore, do not wish to move my amendment No. 954.

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* [ ] Translation of Hindustani speech.

Article 35

Mr. Vice-President : Now, we come to article 35.

The Honourable Dr. B. R. Ambedkar : Sir, I have to request you to allow this article to stand over for the present.

Mr. Vice-President : This article is allowed to stand over for consideration later. Is it agreed to by the House?

Honourable Members : Yes.

Article 36

Mr. Vice-President : Then, the motion before the House is that article 36 do form part of the Constitution. Amendment No. 961 is a negative motion. So we come to amendment No. 962—Shri L. K. Maitra.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. Vice-President, Sir, I beg to move:

"That in article 36, the words 'Every citizen is entitled to free primary education and' be deleted."

Sir, I will strictly obey the injunction given by you regarding curtailment of speeches. I will put in half a dozen sentences to explain the purpose of this amendment. If this amendment is accepted by the House, as I hope it will be, then the article will read as follows:—

"The State shall endeavour to provide, within a period of ten years from the commencement of this Constitution, for free and compulsory education for all children until they complete the age of fourteen years."

It will thus be seen that this article 36 will be brought into line with the preceding and the subsequent articles, in form, at any rate. The House will observe that articles 30, 31, 32, 33, 34, 35, 37 and 38 all begin with the words—"The State shall..... so and so". But article 36 alone begins with—"Every citizen is entitled to.... etc. Therefore if we delete the words I have referred to, this article also will come into line with the other articles. Besides the question of form there is also a question of substance involved in this. Part IV deals with directive principles of State policy, and the provisions in it indicate, the policy that is to be pursued by the future governments of the country. Unfortunately, in article 36, this directive principle of State policy is coupled with a sort of a fundamental right, *i.e.* "that every citizen is entitled..... etc." This cannot fit in with the others. Here a directive principle is combined with a fundamental right. Therefore, I submit that the portion which I have indicated, should be deleted.

Now, there is another point, and I particularly want to draw the attention of the Drafting Committee to it. You will see that in the original draft, in the margin of this article there is a note, "provision for free primary education." But in article 36, we are not making any distinction between primary and secondary educations. That is to say, to every citizen, up to the age of 14 years, the State shall provide, within ten years of the commencement of this Constitution, free and compulsory education. In other words, the education need not be confined to the primary but it may go up to the secondary stage, so long as the person is upto the age of 14. Therefore, the marginal note should be amended accordingly. Sir, I move.

Mr. Naziruddin Ahmad : (West Bengal: Muslim): Sir, I beg to move:

"That in article 36, for the word 'education', the words 'primary education' be substituted."

Sir, this article, as has been clearly pointed out by the previous speaker, deals with primary education.

It begins with primary education and the marginal note also makes it clear. But as has been pointed out, towards the end what is said is that the State shall provide within a period of ten years from the commencement of this Constitution for "free and compulsory education." I believe from the context and from other internal evidence that what was intended was compulsory 'primary' education. The State cannot undertake to give compulsory education of a secondary character.

Pandit Lakshmi Kanta Maitra : As far as possible !

Mr. Naziruddin Ahmad : But then if you enlarge the scope of the Government's duty, it will be making it innocuous. I think it would be better to confine it to primary education and that should be a directive principle of the State. I think that is what is meant. The word, if introduced, would, I submit, fill up an obvious lacuna.

Mr. Vice-President : It would be as well if you move the other amendments in your name as that would save the trouble of your coming up again.

Mr. Naziruddin Ahmad : Sir, I move:

"That in article 36, a semi-colon be inserted after the word 'education'."

As this relates only to punctuation. I am asking the Drafting Committee to consider it.

Mr. Vice-President : Article 36 is now open to general discussion.

Shri B. Das (Orissa: General): I have never been enamoured of these directive principles. They are just pious hopes and pious wishes laid down there occasionally to create trouble for the provincial Ministries and very seldom the Central Government will be affected by criticisms of this House. Yet article 36 deals with primary education, which article 23 on Fundamental Rights which we have not yet discussed, ignores to provide for. I am not yet satisfied from the speeches what free and compulsory primary education will be like. Will it be in one language, or will it be in two or three languages if a province has two or three kinds of people making up the province?

I will talk of Orissa, where we have some of the Andhra people and some Bengalee people, for whom I think free primary education up to a certain stage should be provided by the State. The same demand I make from the provinces of Madras, Bengal and the Central Provinces, where education in the mother tongue of the Oriyas has been denied. My friend, Premier Shukla, is looking at me. It is not his Ministry's fault. It is a tradition that has grown. No one bothers about giving free primary education in the mother tongue of any race that has a language and a script of its own. In Bengal in the Midnapore district, in the 1881 census, five lakhs of Oriyas existed. In the last census only a few thousands and perhaps in the coming census they will be completely wiped out. But yet primary education gives individuals the chance to be in communion with their God and in communion with the textbooks of their religion. The Oriya children of Midnapore have at present to study Bengali. They have changed their names into Bengali names. So is the case in Madras in the Vizagapatam district where very large numbers of Oriyas live and it was their misfortune that the area could not become part of Orissa Province in 1936. But I do want in bi-lingual areas where there is a large population of another race, the Provincial Ministry and the Government concerned should not deny those children their right of knowledge in their own mother tongue so that when they become literate they may have been able to undertake some study of their religious texts. It is not the policy of this House or the contemplation of this Constitution that every province as it is constituted now should make all the people of one language. That is a problem on which I have had discussions in private. I understand that the

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Drafting Committee will take this up in article 23(1). So that is the reason why I did not move my amendment No. 970 which asked for free and compulsory primary education for all children in their respective mother tongue. It is a very primary and essential problem that we should not denationalise those people who have a mother tongue of their own and compel them to learn the mother tongue of someone else, however suitable it may be.

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment proposed by my friend, Mr. Maitra, which suggests the deletion of the words "every citizen is entitled to free primary education and". But I am not prepared to accept the amendment of my friend, Mr. Naziruddin Ahmad. He seems to think that the objective of the rest of the clause in article 36 is restricted to free primary education. But that is not so. The clause as it stands after the amendment is that every child shall be kept in an educational institution under training until the child is of 14 years. If my honourable Friend, Mr. Naziruddin Ahmad had referred to article 18, which forms part of the fundamental rights, he would have noticed that a provision is made in article 18 to forbid any child being employed below the age of 14. Obviously, if the child is not to be employed below the age of 14, the child must be kept occupied in some educational institution. That is the object of article 36, and that is why I say the word "primary" is quite inappropriate in that particular clause, and I therefore oppose his amendment.

Mr. Vice-President : The question is:

"That in article 36, the words 'Every citizen is entitled to free primary education and' be deleted."

The motion was adopted.

Mr. Vice-President : The question is:

"That in article 36, for the word 'education' the words 'primary education' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That article 36, as amended, stand part of the Constitution."

The motion was adopted.

Article 36, as amended, was added to the Constitution.

Article 35

Mr. Mohamad Ismail Sahib (Madras: Muslim): Sir, I move that the following proviso be added to article 35:

"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

The right of a group or a community of people to follow and adhere to its own personal law is among the fundamental rights and this provision should really be made amongst the statutory and justiciable fundamental rights. It is for this reason that I along with other friends have given amendments to certain other articles going previous to this which I will move at the proper time.

Now the right to follow personal law is part of the way of life of those people who are following such laws; it is part of their religion and part of their culture. If anything is done affecting the personal laws, it will be tantamount to interference with the way of life of those people who have been observing these laws for generations and ages. This secular State which we are trying to create should not do anything to interfere with the

way of life and religion of the people. The matter of retaining personal law is nothing new; we have precedents in European countries. Yugoslavia, for instance, that is, the kingdom of the Serbs, Croats and Slovenes, is obliged under treaty obligations to guarantee the rights of minorities. The clause regarding rights of Mussulmans reads as follows:

"The Serb, Crot and Slovene State agrees to grant to the Mussulmans in the matter of family law and personal status provisions suitable for regulating these matters in accordance with the Mussulman usage."

We find similar clauses in several other European constitutions also. But these refer to minorities while my amendment refers not to the minorities alone but to all people including the majority community, because it says, "Any group, section or community of people shall not be obliged" etc. Therefore it seeks to secure the rights of all people in regard to their existing personal law.

Again this amendment does not seek to introduce any innovation or bring in a new set of laws for the people, but only wants the maintenance of the personal law already existing among certain sections of people. Now why do people want a uniform civil code, as in article 35? Their idea evidently is to secure harmony through uniformity. But I maintain that for that purpose it is not necessary to regiment the civil law of the people including the personal law. Such regimentation will bring discontent and harmony will be affected. But if people are allowed to follow their own personal law there will be no discontent or dissatisfaction. Every section of the people, being free to follow its own personal law will not really come in conflict with others.

Shri Suresh Chandra Majumdar : (West Bengal: General): Sir, on a point of order, what is being said now is a direct negation of article 35 and cannot be taken as an amendment. The Honourable Member can only speak in opposition.

Mr. Mohamed Ismail Sahib : Article 35 reads thus:

"The State shall endeavour to secure for citizens a uniform civil code throughout the territory of India."

That will include the personal law as well.

Mr. Vice-President : I hold that the Honourable Member is in order.

Mr. Mohamed Ismail Sahib : Therefore, Sir, what I submit is that for creating and augmenting harmony in the land it is not necessary to compel people to give up their personal law. I request the Honourable Mover to accept this amendment.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That to article 35, the following proviso be added, namely:—

'Provided that the personal law of any community which has been guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law'."

In moving this, I do not wish to confine my remarks to the inconvenience felt by the Muslim community alone. I would put it on a much broader ground. In fact, each community, each religious community has certain religious laws, certain civil laws inseparably connected with religious beliefs and practices. I believe that in framing a uniform draft code these religious laws or semi-religious laws should be kept out of its way. There are several reasons which underlie this amendment. One of them is that perhaps it clashes with article 19 of the Draft Constitution. In article 19 it is provided that 'subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right

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freely to profess, practise and propagate religion.' In fact, this is so fundamental that the Drafting Committee has very rightly introduced this in this place. Then in clause (2) of the same article it has been further provided by way of limitation of the right that 'Nothing in this article shall affect the operation of any existing law or preclude the State from making any law regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice'. I can quite see that there may be many pernicious practices which may accompany religious practices and they may be controlled. But there are certain religious practices, certain religious laws which do not come within the exception in clause (2), *viz.* financial, political or other secular activity which may be associated with religious practices. Having guaranteed, and very rightly guaranteed the freedom of religious practice and the freedom to propagate religion, I think the present article tries to undo what has been given in article 19. I submit, Sir, that we must try to prevent this anomaly. In article 19 we enacted a positive provision which is justiciable and which any subject of a State irrespective of his caste and community can take to a Court of law and seek enforcement. On the other hand, by the article under reference we are giving the State some amount of latitude which may enable it to ignore the right conceded. And this right is not justiciable. It recommends to the State certain things and therefore it gives a right to the State. But then the subject has not been given any right under this provision. I submit that the present article is likely to encourage the State to break the guarantees given in article 19.

I submit, Sir, there are certain aspects of the Civil Procedure Code which have already interfered with our personal laws and very rightly so. But during the 175 years of British rule, they did not interfere with certain fundamental personal laws. They have enacted the Registration Act, the Limitation Act, the Civil Procedure Code, the Criminal Procedure Code, the Penal Code, the Evidence Act, the Transfer of Property Act, the Sarda Act and various other Acts. They have been imposed gradually as occasion arose and they were intended to make the laws uniform although they clash with the personal laws of a particular community. But take the case of marriage practice and the laws of inheritance. They have never interfered with them. It will be difficult at this stage of our society to ask the people to give up their ideas of marriage, which are associated with religious institutions in many communities. The laws of inheritance are also supposed to be the result of religious injunctions. I submit that the interference with these matters should be gradual and must progress with the advance of time. I have no doubt that a stage would come when the civil law would be uniform. But then that time has not yet come. We believe that the power that has been given to the State to make the Civil Code uniform is in advance of the time. As it is, any State would be justified under article 35 to interfere with the settled laws of the different communities at once. For instance, there are marriage practices in various communities. If we want to introduce a law that every marriage shall be registered and if not it will not be valid, we can do so under article 35. But would you invalidate a marriage which is valid under the existing law and under the present religious beliefs and practices on the ground that it has not been registered under any new law and thus bastardise the children born?

This is only one instance of how interference can go too far. As I have already submitted, the goal should be towards a uniform civil code but it should be gradual and with the consent of the people concerned. I have therefore in my amendment suggested that religious laws relating to particular communities should not be affected except with their consent to be ascertained in such manner as Parliament may decide by law. Parliament may well decide to ascertain the consent of the community through their representatives, and

this could be secured by the representatives by their election speeches and pledges. In fact, this may be made an article of faith in an election, and a vote on that could be regarded as consent. These are matters of detail. I have attempted by my amendment to leave it to the Central Legislature to decide how to ascertain this consent. I submit, Sir, that this is not a matter of mere idealism. It is a question of stern reality which we must not refuse to face and I believe it will lead to a considerable amount of misunderstanding and resentment amongst the various sections of the country. What the British in 175 years failed to do or was afraid to do, what the Muslims in the course of 500 years refrained from doing, we should not give power to the State to do all at once. I submit, Sir, that we should proceed not in haste but with caution, with experience, with statesmanship and with sympathy.

(B. Pocker Sahib Bahadur rose to speak.)

Mr. Vice-President : When we discuss the clause as a whole, you will get your chance. Amendment No. 960. The Mover has called it a new sub-clause, that is 35-A. We can take it up later on. The article as a whole is now under consideration.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : I have given notice of an amendment to article 35. It is No. 833.

Mr. Vice-President : That escaped my attention. I am glad you pointed that out.

Mahbood Ali Baig Sahib Bahadur : Sir, I move that the following proviso be added to article 35:

"Provided that nothing in this article shall affect the personal law of the citizen."

My view of article 35 is that the words "Civil Code" do not cover the strictly personal law of a citizen. The Civil Code covers laws of this kind: laws of property, transfer of property, law of contract, law of evidence etc. The law as observed by a particular religious community is not covered by article 35. That is my view. Anyhow, in order to clarify the position that article 35 does not affect the personal law of the citizen, I have given notice of this amendment. Now, Sir, if for any reason the framers of this article have got in their minds that the personal law of the citizen is also covered by the expression "Civil Code", I wish to submit that they are overlooking the very important fact of the personal law being so much dear and near to certain religious communities. As far as the Mussalmans are concerned, their laws of succession, inheritance, marriage and divorce are completely dependent upon their religion.

Shri M. Ananthasayanam Ayyangar : It is a matter of contract.

Mahboob Ali Baig Sahib Bahadur : I know that Mr. Ananthasayanam Ayyangar has always very queer ideas about the laws of other communities. It is interpreted as a contract, while the marriage amongst the Hindus is a Samskara and that among Europeans it is a matter of status. I know that very well, but this contract is enjoined on the Mussalmans by the Quran and if it is not followed, a marriage is not a legal marriage at all. For 1350 years this law has been practised by Muslims and recognised by all authorities in all states. If today Mr. Ananthasayanam Ayyangar is going to say that some other method of proving the marriage is going to be introduced, we refuse to abide by it because it is not according to our religion. It is not according to the code that is laid down for us for all times in this matter. Therefore, Sir, it is not a matter to be treated so lightly. I know that in the case of some other communities also, their personal law depends entirely upon their religious tenets. If some communities have got their own way of dealing with their religious tenets and practices, that cannot be imposed on a community which insists that their religious tenets should be observed.

Shri L. Krishnaswami Bharathi : It is sought to be done only by consent of all concerned.

Mr. Vice-President : Mr. Bharathi, the majority community has always been so very indulgent that I would ask you as a personal favour to give the fullest possible freedom to our Muslim brethren to express their views. I would ask you to exercise patience for a little while. I know they feel very strongly on this matter.

Shri L. Krishnaswami Bharathi : My point was, Sir, that it was not an attempt at imposition. If anything is done, it will be done only with the consent of all concerned, and the Honourable Member need not labour that point.

Mr. Vice-President : It is understood and I thank you for it.

Mahboob Ali Baig Sahib Bahadur : Now, Sir, people seem to have very strange ideas about secular State. People seem to think that under a secular State, there must be a common law observed by its citizens in all matters, including matters of their daily life, their language, their culture, their personal laws. That is not the correct way to look at this secular State. In a secular State, citizens belonging to different communities must have the freedom to practise their own religion, observe their own life and their personal laws should be applied to them. Therefore, I hope the framers of this article have not in their minds the personal law of the people to cover the words "Civil Code". With this observation, I move that that it may be made clear by this proviso, lest an interpretation may be given to it that these words "Civil Code" include personal law of any community.

B. Pocker Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, Sir, I support the motion which has already been moved by Mr. Mohamed Ismail Sahib to the effect that the following proviso be added to article 35:—

"Provided that any group, section or community of people shall not be obliged to give up its own personal law in case it has such a law."

It is a very moderate and reasonable amendment to this article 35. Now I would request the House to consider this amendment not from the point of view of the Mussalman community alone, but from the point of view of the various communities that exist in this country, following various codes of law, with reference to inheritance, marriage, succession, divorce, endowments and so many other matters. The House will not that one of the reasons why the Britisher, having conquered this country, has been able to carry on the administration of this country for the last 150 years and over was that he gave a guarantee of following their own personal laws to each of the various communities in the country. That is one of the secrets of success and the basis of the administration of justice on which even the foreign rule was based. I ask, Sir, whether by the freedom we have obtained for this country, are we going to give up that freedom of conscience and that freedom of religious practices and that freedom of following one's own personal law and try or aspire to impose upon the whole country one code of civil law, whatever it may mean,—which I say, as it is, may include even all branches of civil law, namely, the law of marriage, law of inheritance, law of divorce and so many other kindred matters?

In the first place, I would like to know the real intention with which this clause has been introduced. If the words "Civil Code" are intended only to apply to matters of procedure like the Civil Procedure Code and such other laws which are uniform so far as India is concerned at present well, nobody has any objection to that, but the various Civil Courts Acts in the various provinces in this country have secured for each community the right to follow their personal laws as regards marriage, inheritance, divorce, etc. But if it is intended that the aspiration of the State should be to override all these provisions and to have uniformity of law to be imposed upon the whole people on these matters which are dealt with by the Civil Courts Acts in the various provinces, well, I would only say, Sir, that it is a tyrannous provision which ought not to be tolerated; and let it not be taken that I am only voicing forth the feeling of the Mussalmans. In saying this, I am voicing forth the feeling of ever so

many sections in this country who feel that it would be really tyrannous to interfere with the religious practices, and with the religious laws, by which they are governed now.

Now, Sir, just like many of you, I have received ever so many pamphlets which voice forth the feelings of the people in these matters. I am referring to many pamphlets which I have received from organisations other than Mussalmans, from organisations of the Hindus, who characterize such interference as most tyrannous. They even question, Sir, the right and the authority of this body to interfere with their rights from the constitutional point of view. They ask: Who are the members of this Constituent Assembly who are contemplating to interfere with the religious rights and practices? Were they returned there on the issue as to whether they have got this right or not? Have they been returned by the various legislatures, the elections to which were fought out on these issues?

If such a body as this interferes with the religious rights and practices, it will be tyrannous. These organisations have used a much stronger language than I am using, Sir. Therefore, I would request the Assembly not to consider what I have said entirely as coming from the point of view of the Muslim community. I know there are great differences in the law of inheritance and various other matters between the various sections of the Hindu community. Is this Assembly going to set aside all these differences and make them uniform? By uniform, I ask, what do you mean and which particular law, of which community are you going to take as the standard? What have you got in your mind in enacting a clause like this? There are the Mitakshara and Dayabaga systems; there are so many other systems followed by various other communities. What is it that you are making the basis? Is it open to us to do anything of this sort? By this one clause you are revolutionising the whole country and the whole setup. There is no need for it.

Sir, as already pointed out by one of my predecessors in speaking on this motion, this is entirely antagonistic to the provision made as regards Fundamental Rights in article 19. If it is antagonistic, what is the purpose served by a clause like this? Is it open to this Assembly to pass by one stroke of the pen an article by which the whole country is revolutionised? Is it intended? I do not know what the framers of this article mean by this. On a matter of such grave importance, I am very sorry to find that the framers or the draftsmen of this article have not bestowed sufficiently serious attention to that. Whether it is copied from anywhere or not, I do not know. Anyhow, if it is copied from anywhere, I must condemn that provision even in that Constitution. It is very easy to copy sections from other constitutions of countries where the circumstances are entirely different. There are ever so many multitudes of communities following various customs for centuries or thousands of years. By one stroke of the pen you want to annul all that and make them uniform. What is the purpose served? What is the purpose served by this uniformity except to murder the consciences of the people and make them feel that they are being trampled upon as regards their religious rights and practices? Such a tyrannous measure ought not to find a place in our Constitution. I submit, Sir, there are ever so many sections of the Hindu community who are rebelling against this and who voice forth their feelings in much stronger language than I am using. If the framers of this article say that even the majority community is uniform in support of this, I would challenge them to say so. It is not so. Even assuming that the majority community is of this view, I say, it has to be condemned and it ought not to be allowed, because, in a democracy, as I take it, it is the duty of the majority to secure the sacred rights of every minority. It is a misnomer to call it a democracy if the majority rides rough-shod over the rights of the minorities. It is not democracy at all; it is tyranny. Therefore, I would submit to

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you and all the Members of this House to take very serious notice of this article; it is not a light thing to be passed like this.

In this connection, Sir, I would submit that I have given notice of an amendment to the Fundamental Right article also. This is only a Directive Principle.

Mr. Vice-President : That may be taken up at the proper time.

B. Pocker Sahib Bahadur : What I would submit is only this. The result of any voting on this should not be allowed to affect the fate of that amendment.

Mr. Hussain Imam (Bihar : Muslim) : Mr. Vice-President, Sir, India is too big a country with a large population so diversified that it is almost impossible to stamp them with one kind of anything. In the north, we have got extreme cold; in the south we have extreme heat. In Assam we have got more rains than anywhere else in the world; about 400 inches; just near up in the Rajputana desert, we have no rains. In a country so diverse, is it possible to have uniformity of civil law? We have ourselves further on provided for concurrent jurisdiction to the provinces as well as to the Centre in matters of succession, marriage divorce and other things. How is it possible to have uniformity when there are eleven or twelve legislative bodies ready to legislate on a subject according to the requirements of their own people and their own circumstances. Look at the protection we have given to the backward classes. Their property is safeguarded in a manner in which other property is not safeguarded. In the Scheduled areas,—I know of Jharkhand and Santhal Parganas—we have given special protection to the aboriginal population. There are certain circumstances which demand diversity in the civil laws. I therefore, feel, Sir, that, in addition to the arguments which have been put forward by my friends who spoke before me, in which they feel apprehensive that their personal law will not be safe if this Directive is passed, I suggest that there are other difficulties also which are purely constitutional, depending not so much on the existence of different communities, as on the existence of different levels in the intelligence and equipment of the people of India. You have to deal not with an uniformly developed country. Parts of the country are very very backward. Look at the Assam tribes; what is their condition? Can you have the same kind of law for them as you have for the advanced people of Bombay? You must have a great deal of difference. Sir, I feel that it is all right and a very desirable thing to have a uniform law, but at a very distant date. For that, we should first await the coming of that event when the whole of India has got educated, when mass illiteracy has been removed, when people have advanced, when their economic conditions are better, when each man is able to stand on his own legs and fight his own battles. Then, you can have uniform laws. Can you have, today, uniform laws as far as a child and a young man are concerned?

Even today under the Criminal law you give juvenile offenders a lighter punishment than you do to adult offenders. The apprehension felt by the members of the minority community is very real. Secular State does not mean that it is anti-religious State. It means that it is not irreligious but non-religious and as such there is a world of difference between irreligious and non-religious. I therefore suggest that it would be a good policy for the members of the Drafting Committee to come forward with such safeguards in this proviso as will meet the apprehensions genuinely felt and which people are feeling and I have every hope that the ingenuity of Dr. Ambedkar will be able to find a solution for this.

Shri K. M. Munshi (Bombay : General) : Mr. Vice-President, I beg to submit a few considerations. This particular clause which is now before the House is not brought for discussion for the first time. It has been

discussed in several committees and at several places before it came to the House. The ground that is now put forward against it is, firstly that it infringes the Fundamental Right mentioned in article 19; and secondly, it is tyrannous to the minority.

As regards article 19 the House accepted it and made it quite clear that—"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law (a) regulating or restricting"—I am omitting the unnecessary words—"or other secular activity which may be associated with religious practices; (b) for social welfare and reforms". Therefore the House has already accepted the principle that if a religious practice followed so far covers a secular activity or falls within the field of social reform or social welfare, it would be open to Parliament to make laws about it without infringing this Fundamental Right of a minority.

It must also be remembered that if this clause is not put in, it does not mean that the Parliament in future would have no right to enact a Civil Code. The only restriction to such a right would be article 19 and I have already pointed out that article 19, accepted by the House unanimously, permits legislation covering secular activities. The whole object of this article is that as and when the Parliament thinks proper or rather when the majority in the Parliament thinks proper an attempt may be made to unify the personal law of the country.

A further argument has been advanced that the enactment of a Civil Code would be tyrannical to minorities. Is it tyrannical? Nowhere in advanced Muslim countries the personal law of each minority has been recognised as so sacrosanct as to prevent the enactment of a Civil Code. Take for instance Turkey or Egypt. No minority in these countries is permitted to have such rights. But I go further. When the Shariat Act was passed or when certain laws were passed in the Central Legislature in the old regime, the Khojas and Cutchi Memons were highly dissatisfied.

They then followed certain Hindu customs; for generations since they became converts they had done so. They did not want to conform to the Shariat; and yet by a legislation of the Central Legislature certain Muslim members who felt that Shariat law should be enforced upon the whole community carried their point. The Khojas and Cutchi Memons most unwillingly had to submit to it. Where were the rights of minority then? When you want to consolidate a community, you have to take into consideration the benefit which may accrue to the whole community and not to the customs of a part of it. It is not therefore correct to say that such an act is tyranny of the majority. If you will look at the countries in Europe which have a Civil Code, everyone who goes there from any part of the world and every minority, has to submit to the Civil Code. It is not felt to be tyrannical to the minority. The point however is this, whether we are going to consolidate and unify our personal law in such a way that the way of life of the whole country may in course of time be unified and secular. We want to divorce religion from personal law, from what may be called social relations or from the rights of parties as regards inheritance or succession. What have these things got to do with religion I really fail to understand. Take for instance the Hindu Law Draft which is before the Legislative Assembly. If one looks at Manu and Yagnyavalkya and all the rest of them, I think most of the provisions of the new Bill will run counter to their injunctions. But after all we are an advancing society. We are in a stage where we must unify and consolidate the nation by every means without interfering with religious practices. If however the religious practices in the past have been so construed as to cover the whole field of life, we have reached a point when we must put our foot down and say that these matters are not religion, they are purely matters for secular legislation. This is what is emphasised by this article.

[Shri K. M. Munshi]

Now look at the disadvantages that you will perpetuate if there is no Civil Code. Take for instance the Hindus. We have the law of Mayukha applying in some parts of India; we have Mithakshara in others; and we have the law-Dayabagha in Bengal. In this way even the Hindus themselves have separate laws and most of our Provinces and States have started making separate Hindu law for themselves. Are we going to permit this piecemeal legislation on the ground that it affects the personal law of the country? It is therefore not merely a question for minorities but it also affects the majority.

I know there are many among Hindus who do not like a uniform Civil Code, because they take the same view as the Honourable Muslim Members who spoke last. They feel that the personal law of inheritance, succession etc. is really a part of their religion. If that were so, you can never give, for instance, equality to women. But you have already passed a Fundamental Right to that effect and you have an article here which lays down that there should be no discrimination against sex. Look at Hindu Law; you get any amount of discrimination against women; and if that is part of Hindu religion or Hindu religious practice, you cannot pass a single law which would elevate the position of Hindu women to that of men. Therefore, there is no reason why there should not be a civil code throughout the territory of India.

There is one important consideration which we have to bear in mind—and I want my Muslim friends to realise this—that the sooner we forget this isolationist outlook on life, it will be better for the country. Religion must be restricted to spheres which legitimately appertain to religion, and the rest of life must be regulated, unified and modified in such a manner that we may evolve, as early as possible a strong and consolidated nation. Our first problem and the most important problem is to produce national unity in this country. We think we have got national unity. But there are many factors—and important factors—which still offer serious dangers to our national consolidation, and it is very necessary that the whole of our life, so far as it is restricted to secular spheres, must be unified in such a way that as early as possible, we may be able to say, "Well, we are not merely a nation because we say so, but also in effect, by the way we live, by our personal law, we are a strong and consolidated nation". From that point of view alone, I submit, the opposition is not, if I may say so, very well advised. I hope our friends will not feel that this is an attempt to exercise tyranny over a minority; it is much more tyrannous to the majority.

This attitude of mind perpetuated under the British rule, that personal law is part of religion, has been fostered by the British and by British courts. We must, therefore, outgrow it. If I may just remind the honourable Member who spoke last of a particular incident from Fereshta which comes to my mind, Allauddin Khilji made several changes which offended against the Shariat, though he was the first ruler to establish Muslim Sultanate here. The Kazi of Delhi objected to some of his reforms, and his reply was—"I am an ignorant man and I am ruling this country in its best interests. I am sure, looking at my ignorance and my good intentions, the Almighty will forgive me, when he finds that I have not acted according to the Shariat." If Allauddin could not, much less can a modern government accept the proposition that religious rights cover personal law or several other matters which we have been unfortunately trained to consider as part of our religion. That is my submission.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, after the very full exposition of my friend the Honourable Mr. Munshi, it is not necessary to cover the whole ground. But it is as well to understand whether there can be any real objection to the article as it runs.

"The State shall endeavour to secure for the citizens a uniform civil code throughout the territory of India."

A Civil Code, as has been pointed out, runs into every department of civil relations, to the law of contracts, to the law of property, to the law of succession, to the law of marriage and similar matters. How can there be any objection to the general statement here that the States shall endeavour to secure a uniform civil code throughout the territory of India?

The second objection was that religion was in danger, that communities cannot live in amity if there is to be a uniform civil code. The article actually aims at amity. It does not destroy amity. The idea is that differential systems of inheritance and other matters are some of the factors which contribute to the differences among the different peoples of India. What it aims at is to try to arrive at a common measure of agreement in regard to these matters. It is not as if one legal system is not influencing or being influenced by another legal system. In very many matters today the sponsors of the Hindu Code have taken a lead not from Hindu Law alone, but from other systems also. Similarly, the Succession Act has drawn upon both the Roman and the English systems. Therefore, no system can be self-contained, if it is to have in it the elements of growth. Our ancients did not think of a unified nation to be welded together into a democratic whole. There is no use clinging always to the past. We are departing from the past in regard to an important particular, namely, we want the whole of India to be welded and united together as a single nation. Are we helping those factors which help the welding together into a single nation, or is this country to be kept up always as a series of competing communities? That is the question at issue.

Now, my friend Mr. Pocker levelled an attack against the Drafting Committee on the ground that they did not know their business. I should like to know whether he has carefully read what happened even in the British regime. You must know that the Muslim law covers the field of contracts, the field of criminal law, the field of divorce law, the field of marriage and every part of law as contained in the Muslim law. When the British occupied this country, they said, we are going to introduce one criminal law in this country which will be applicable to all citizens, be they Englishmen, be they Hindus, be they Muslims. Did the Muslims take exception, and did they revolt against the British for introducing a single system of criminal law? Similarly, we have the law of contracts governing transactions between Muslims and Hindus, between Muslims and Muslims. They are governed not by the law of the Kuran but by the Anglo-Indian jurisprudence, yet no exception was taken to that. Again, there are various principles in the law of transfer which have been borrowed from the English jurisprudence.

Therefore, when there is impact between two civilizations or between two culture, each culture must be influenced and influence the other culture. If there is a determined opposition, or if there is strong opposition by any section of the community, it would be unwise on the part of the legislators of this country to attempt to ignore it. Today, even without article 35, there is nothing to prevent the future Parliament of India from passing such laws. Therefore, the idea is to have a uniform civil code.

Now, again, there are Muslims and there are Hindus, there are Catholics, there are Christians, there are Jews, indifferent European countries. I should like to know from Mr. Pocker whether different personal laws are perpetuated in France, in Germany, in Italy and in all the continental countries of Europe, or whether the laws of succession are not co-ordinated and unified in the various

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States. He must have made a detailed study of Muslim jurisprudence and found out whether in all those countries, there is a single system of law or different systems of law.

Leave alone people who are there. Today, even in regard to people in other parts of the country, if they have property in the continent of Europe where the German Civil Code or the French Civil Code obtains, the people are governed by the law of the place in very many respects. Therefore, it is incorrect to say that we are invading the domain of religion. Under the Moslem law, unlike under Hindu law, marriage is purely a civil contract. The idea of a sacrament does not enter into the concept of marriage in Muslim jurisprudence though the incidence of the contract may be governed by what is laid down in the Kuran and by the later jurists. Therefore, there is no question of religion being in danger. Certainly no Parliament, no Legislature will be so unwise as to attempt it, apart from the power of the Legislature to interfere with religious tenets of peoples. After all the only community that is willing to adapt itself to changing times seems to be the majority community in the country. They are willing to take lessons from the minority and adapt their Hindu Laws and take a leaf from the Muslims for the purpose of reforming even the Hindu law. Therefore, there is no force to the objection that is put forward to article 35. The future Legislatures may attempt a uniform Civil Code or they may not. The uniform Civil Code will run into every aspect of Civil Law. In regard to contracts, procedure and property uniformity is sought to be secured by their finding a place in the Concurrent List. In respect of these matters the greatest contribution of British jurisprudence has been to bring about a uniformity in these matters. We only go a step further than the British who ruled in this country. Why should you distrust much more a national indigenous Government than a foreign Government which has been ruling? Why should our Muslim friends have greater confidence, greater faith in the British rule than in a democratic rule which will certainly have regard to the religious tenets and beliefs of all people?

Therefore, for those reasons, I submit that the House may unanimously pass this article which has been placed before the Members after due consideration.

The Honourable Dr. B. R. Ambedkar : Sir, I am afraid I cannot accept the amendments which have been moved to this article. In dealing with this matter, I do not propose to touch on the merits of the question as to whether this country should have a Civil Code or it should not. That is a matter which I think has been dealt with sufficiently for the occasion by my friend, Mr. Munshi, as well as by Shri Alladi Krishnaswami Ayyar. When the amendments to certain fundamental rights are moved, it would be possible for me to make a full statement on this subject, and I therefore do not propose to deal with it here.

My friend, Mr. Hussain Imam, in rising to support the amendments, asked whether it was possible and desirable to have a uniform Code of laws for a country so vast as this is. Now I must confess that I was very much surprised at that statement, for the simple reason that we have in this country a uniform code of laws covering almost every aspect of human relationship. We have a uniform and complete Criminal Code operating throughout the country, which is contained in the Penal Code and the Criminal Procedure Code. We have the Law of Transfer of Property, which deals with property relations and which is operative throughout the country. Then there are the Negotiable Instruments Acts: and I can cite innumerable enactments which would prove that this country has practically a Civil Code, uniform in its content and applicable to the whole of the country. The only province the Civil Law has not been able to invade so far is Marriage and Succession. It is this little corner which we have not

been able to invade so far and it is the intention of those who desire to have article 35 as part of the Constitution to bring about that change. Therefore, the argument whether we should attempt such a thing seems to me somewhat misplaced for the simple reason that we have, as a matter of fact, covered the whole lot of the field which is covered by a uniform Civil Code in this country. It is therefore too late now to ask the question whether we could do it. As I say, we have already done it.

Coming to the amendments, there are only two observations which I would like to make. My first observation would be to state that members who put forth these amendments say that the Muslim personal law, so far as this country was concerned, was immutable and uniform through the whole of India. Now I wish to challenge that statement. I think most of my friends who have spoken on this amendment have quite forgotten that up to 1935 the North-West Frontier Province was not subject to the Shariat Law. It followed the Hindu Law in the matter of succession and in other matters, so much so that it was in 1939 that the Central Legislature had to come into the field and to abrogate the application of the Hindu Law to the Muslims of the North-West Frontier Province and to apply the Shariat Law to them. That is not all.

My honourable friends have forgotten, that, apart from the North-West Frontier Province, up till 1937 in the rest of India, in various parts, such as the United Provinces, the Central Provinces and Bombay, the Muslims to a large extent were governed by the Hindu Law in the matter of succession. In order to bring them on the plane of uniformity with regard to the other Muslims who observed the Shariat Law, the Legislature had to intervene in 1937 and to pass an enactment applying the Shariat Law to the rest of India.

I am also informed by my friend, Shri Karunakara Menon, that in North Malabar the Marumakkathayam Law applied to all—not only to Hindus but also to Muslims. It is to be remembered that the Marumakkathayam Law is a Matriarchal form of law and not a Patriarchal form of law.

The Mussulmans, therefore, in North Malabar were up to now following the Marumakkathyam law. It is therefore no use making a categorical statement that the Muslim law has been an immutable law which they have been following from ancient times. That law as such was not applicable in certain parts and it has been made applicable ten years ago. Therefore if it was found necessary that for the purpose of evolving a single civil code applicable to all citizens irrespective of their religion, certain portions of the Hindu law, not because they were contained in Hindu law but because they were found to be the most suitable, were incorporated into the new civil code projected by article 35, I am quite certain that it would not be open to any Muslim to say that the framers of the civil code had done great violence to the sentiments of the Muslim community.

My second observation is to give them an assurance. I quite realise their feelings in the matter, but I think they have read rather too much into article 35, which merely proposes that the State shall endeavour to secure a civil code for the citizens of the country. It does not say that after the Code is framed the State shall enforce it upon all citizens merely because they are citizens. It is perfectly possible that the future Parliament may make a provision by way of making a beginning that the Code shall apply only to those who make a declaration that they are prepared to be bound by it, so that in the initial stage the application of the Code may be purely voluntary. Parliament may feel the ground by some such method. This is not a novel method. It was adopted in the Shariat Act of 1937 when it was applied to territories other than the North-West Frontier Province. The law said that here is a Shariat law which should be applied to Mussulmans provided a Mussulman who wanted that he should be bound by the Shariat Act should go to an officer of the state, make a declaration that

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he is willing to be bound by it, and after he has made that declaration the law will bind him and his successors. It would be perfectly possible for Parliament to introduce a provision of that sort; so that the fear which my friends have expressed here will be altogether nullified. I therefore submit that there is no substance in these amendments and I oppose them.

Mr. Vice-President : The question is:

"That the following proviso be added to article 35:

'Provided that any group, section or community or people shall not be obliged to give up its own personal law in case it has such a law.' "

The motion was negatived.

Mr. Vice-President : The question is:

"That to article 35, the following proviso be added, namely:

'Provided that the personal law of any community which is guaranteed by the statute shall not be changed except with the previous approval of the community ascertained in such manner as the Union Legislature may determine by law.' "

The motion was negatived.

Mr. Vice-President : The question is:

"That Part IV of the Draft Constitution be deleted."

The motion was negatived.

Mr. Vice-President : The question is:

"That article 35, stand part of the Constitution."

The motion was adopted.

Article 35 was added to the Constitution.

Article 37

Sardar Hukum Singh (East Punjab: Sikh): Mr. Vice-President, I move:

"That in article 37, for the words 'Scheduled Castes' the words 'Backward communities of whatever class or religion' be substituted."

Sir, "Scheduled Castes" has been defined in article 303(w) of this Draft Constitution as castes and races specified in the Government of India (Scheduled Castes) Order, 1936. In that Order, most of the tribes, castes and sub-castes are described and include Bawaria, Chamar, Chuhra, Balmiki, Od, Sansi, Sirviband and Ramdasis. It would be conceded that they have different faiths and beliefs. For instance, there are considerable numbers of Sikh, Ramdasis, Odes, Balmiki and Chamars. They are as the backward as their brethren of other beliefs. But, so far, these Sikh backward classes have been kept out of the benefits meant for Scheduled Castes. The result has been either conversion in large numbers or discontent.

I do realise that so far as election to legislatures was concerned, there could be some justification as the Sikhs had separate representation and the Scheduled Castes got their reservation out of General Seats. There is the famous case of S. Gopal Singh Khalsa who could not be allowed to contest a seat unless he declared that he was not a Sikh. Such cases have led to disappointment and discontent on account of a general belief that some sections were being discriminated against.

Now the underlying idea is the uplift of the backward section of the community so that they may be able to make equal contribution in the national activities. I fully support the idea. I may be confronted with an argument that at least there is the first part of the article which provides for promotion "of educational and economic interests of 'weaker sections' of the people". So far it is quite good and it can apply to every class. But, as the "weaker sections" are not defined anywhere, the apprehension is that the whole attention would be directed to the latter part relating to 'Scheduled Castes' and 'weaker sections'

would not mean anything at all. Even the article lays the whole stress on this latter portion by centralising attention through the words 'in particular' of the 'Scheduled Castes'.

I may not be misunderstood in this respect. I do not grudge this special care of the State being directed towards "Scheduled Castes". Rather, I would support even greater concessions being given and more attention being paid to backward classes. My only object is that there should be no discrimination. That is not the intention of the article either. But, as I have said, so far the "Scheduled Castes" have been understood by general masses to exclude the members of the same castes professing Sikh religion. We should be particular in guaranteeing against any misconstruction being placed or any discrimination being exercised by those who would be responsible for actual working of it. Under the present article, it is the "educational and economic interests" that are to be promoted and therefore it should be made clear that it is to be done for all backward classes, and not for persons professing this or that particular religion or belief. I commend this motion for the acceptance of the House.

Shri A. V. Thakkar (United States of Kathiawar : Saurashtra): Sir, I beg to move this amendment (983) which asks for the inclusion of the backward castes among Hindus and among Muslims.....

The Honourable Dr. B. R. Ambedkar : May I just make a statement? I believe both these amendments dealing with the backward classes, etc. would be more appropriate to the Schedule and could be better considered when we dealt with the Schedule. I would suggest that the consideration of these amendments may be postponed.

Shri A. V. Thakkar : My amendment seeks to lay down certain principles.....

Mr. Vice-President : Dr. Ambedkar proposes to give the fullest possible consideration to these in the Schedule.

Shri A. V. Thakkar : Does he agree to include all backward classes?

Mr. Vice-President : He can hardly agree to anything now. The matter is open to discussion later.

Shri A. V. Thakkar : Then I do not move my amendment now.

Mr. Naziruddin Ahmad : Sir, I am not moving my amendment No. 985. It merely seeks to use capital letters in the case of the Scheduled Castes. I would respectfully draw the attention of the Chairman of the Drafting Committee to article 303 (1), items (w) and (x) on page 147 of the Draft Constitution. We have there specified two definitions, 'Scheduled Castes' and 'Scheduled Tribes'. 'Scheduled Castes' have everywhere been spelt with capital letters, but 'Scheduled tribes' have been spelt with small letters.

The Honourable Dr. B. R. Ambedkar : We shall consider that.

Sardar Hukam Singh : I beg leave to withdraw my amendment. The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : I shall now put article 37 to the vote of the House.

The question is:

"That article 37 do stand part of the Constitution."

The motion was adopted.

Article 37 was added to the Constitution.

Article 38

Mr. Vice-President : The House will now take up article 38 for consideration.

Shri Mahavir Tyagi : Sir, in connection with my amendment No. 999, I have given notice of another amendment (71 in List II) after consulting some of my friends. I hope Mr. Aziz Ahmed Khan who has his own amendment to this article will agree with my amendment. I do not want to make any speech in moving this amendment. Everybody appreciates the value of prohibition. Hence I simply move amendment No. 71 in List II:

"That at the end of article 38, the words 'and shall endeavour to bring about the prohibition of the consumption of intoxicating drinks and drugs which are injurious to health' be inserted."

Sir, for this attempt of mine I am conscious of the abuses that will be hurled on me by the dry mouths of those who have to stop drinking. I am also aware of the blessing that will be showered on me by the wives of those who will benefit by the removal of this evil. I should only wish "good luck" to the country in case this amendment is accepted.

An Honourable Member : It is already past 1 o'clock.

Mr. Vice-President : Somebody is surely to blame. Here in this time-piece it is one minute to one.

The House stands adjourned till 10 A. M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 24th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 24*th November,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

CONDOLENCE ON THE DEATH OF SHRI KANYALAL MANANA

Mr. Vice-President (Dr. H. C. Mookherjee): I understand that Shri Kanyalal Manana who was elected to the Constituent Assembly from Madhya Bharat died sometime ago. This was announced in newspapers and then the news had to be verified. It has been verified now. May I request the Members to stand up for a minute in order to pay respect to his memory?

(All the Members stood up in their seats.)

Mr. Vice-President : I wish that the House should authorise me to send the usual message of condolence to the members of his family.

Honourable Members : Yes.

DRAFT CONSTITUTION—*contd.*

Article 38—*(contd.)*

Mr. Vice-President : We shall commence today's proceedings with the consideration of the particular article with which we are concerned today in the draft Constitution. The introduction of the Bill will be taken up after a little while.

Prof. Shibban Lal Saksena (United Provinces: General): I am tabling an amendment which is an amendment of Mr. Mahavir Tyagi's. I hope it will be acceptable to him, because in his amendment, he has not included the words 'except for medicinal purposes'. I think that if the amendment of Mr. Mahavir Tyagi is accepted as amended by my amendment, it would become much better. I wish Dr. Ambedkar to accept my amendment which is mentioned in No. 86 of list IV.

Sir, I beg to move:

"That at the end of article 38, the following be substituted:—

'and shall endeavour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health except for medicinal purposes'."

This exception in the last four words was not made in the original amendment but I think it is important. I think it was an omission and therefore my amendment should be accepted. Sir, I pointed out the other day while discussing the amendment of Syed Karimuddin that this is a fundamental subject on which opinion in our country is almost unanimous. Probably people do not generally realise the far-reaching consequences of the drink evil. In fact, if we add up the revenues of the various provinces from prohibition, we will find that the figure is of a very high order. I have complete figures for 1940-1941 and in that year the total revenue from prohibition was Rs. 12,52,00,000 from all the provinces. Out of this one crore was from foreign liquors and two crores from opium and only Rs. 25 lakhs of this sum was derived from sales of medicinal and intoxicating drugs. Actually now it has become almost double or even more, in the last six or seven years. So the real magnitude of the

[Prof. Shibban Lal Saksena]

sacrifice involved in accepting this amendment will be clear from the fact that if we can achieve prohibition, we shall be voluntarily foregoing about 25 crores of rupees in revenue. But the revenue is only a fourth or fifth part of the price of liquor and if the revenue lost is Rs. 25 crores, the amount saved to the people is at least Rs. 100 crores which are wasted by the people in the country on intoxicants. Now this 100 crores will be saved to the families of drunkards and especially to labour and Harijan families where this vice is most prevalent. I wish to call the attention of Dr. Ambedkar to the fact that the Harijan and the labour population which earns this money by hard labour spends a large portion of it in the toddy shops and the drink shops which are generally situated in the vicinity of mills and labour and Harijan quarters. I hope that this directive principle will not remain merely a pious wish; but like Madras, all the provinces will enforce it and soon we shall have our country dry and thus we shall set an example to the whole world in this matter.

At present the expenditure on enforcing these excise duties is about a crore and a half of rupees, but I know that if we enforce prohibition, the expenses will increase, so that we are not only sacrificing a revenue of Rs. 25 crores, we shall also spend a few crores on the enforcement of prohibition; it is a big sacrifice, but I think for the great ideal which our leader has bequeathed to us, we must not grudge this sacrifice, because ultimately it will result in a very happy population and a contented country. In fact the advantage in the shape of Rs. 100 crores saved to the Harijan, labour and other drunkard families together with far more valuable moral advantages which far outweigh even the material advantages, which will follow complete prohibition are worth all this great sacrifice. Only the other day the Premier of my province, the Honourable Pandit Govind Ballabh Pant, was telling me that prohibition in Cawnpore has been very beneficial and the labour population in Cawnpore is now very much better off and their families thank the Government for what they have done. I hope very soon the whole country will be dry and we will then have achieved our great ideal of prohibition. I commend the motion to the House.

Shri Mahavir Tyagi (United Provinces: General): Sir, I accept the amendment.

Shri B. H. Khardekar (Kolhapur): Mr. Vice-President, Sir, at the outset I must say I am extremely nervous. This is the first speech that I am making not only in this Assembly, but in any Assembly. I may further add that I have not so far taken part in any college or school debate. I should like, therefore, Sir, to have your indulgence, almost your generosity, particularly when I am making bold to speak something against prohibition. I do want you to give me the necessary hearing.

I have been listening, Sir, very carefully to the number of arguments brought forth in favour of prohibition. I will just mention them and because I think they are very flimsy, I will say what I have to say about them. One of the arguments put forth was that the American Constitution makes such a provision. Sir, are we not going to learn anything from the mistake of others? Is it going to be said of us that history teaches us nothing? The Americans had it in their Constitution; the Americans provided for it in the legislature; ultimately, in the light of experience, they had to give it up completely.

Then, Sir, the second argument put forth has been that the Congress is pledged to it. Sir, it has been repeatedly admitted that in this House there is neither a Government nor any party. The Congress is no longer a mass organisation; it is one, perhaps the most important political party. This is only a technical objection. Let me go a little further. The Congress has done such a tremendous work in the past and innumerable sacrifices and so on for the attainment of freedom. The Congress is pledged to a number of good things. My

request to the members of the Congress is, you must try to see which pledges should come first. You have to see first of all how you are going to make the lot of the teeming millions of India economically and in several other respects better.

The third argument put forth has been the success of prohibition in Madras. How, Sir, is this success measured I want to know. Is it measured in terms merely because there is prohibition? You have a number of people who go on still indulging in drinks and go on filling the innumerable jails. Have you also measured as a result of the squandering of several crores of Rupees, what you have failed to do? Have you tried to measure the success of prohibition in Madras from that point of view?

The next argument put forth was that all communities want it. Parsis and Christians also were included in that list. Sir, I happen to know Parsis and Christians a little bit and I think, Sir, definitely they are not in favour of prohibition.

Then, the last and perhaps the most difficult argument for me to answer is that Gandhiji has been always for prohibition. Let me make it very clear to this House that I am second to none in my admiration, respect and veneration for Gandhiji. Gandhiji is the father of the Nation; he is the father of all of us. But, Sir, I want to say something. It was stated here, might be perhaps a little frivolously, that where liquor is, Gandhiji is not; where Gandhiji is, liquor is not. In other words, Gandhiji shuns sinners, presuming that liquor drinking is a sin. Gandhiji read, studied, I dare say, loved the Gita, and as a student of the Gita, he had, what I may say, attained *Sama Drishti.* He did not make any distinction between a sinner and a saint. Gandhiji was a saint first, a politician afterwards. I want you to consider, Sir, I make bold myself to ask you, what do you think is the essence of Gandhism? The essence of Gandhism is love, toleration; its essence is non-violence, search for truth and all these important things. The externals of Gandhism or the outward trappings of Gandhism are Khaddar and prohibition. Unfortunately, the followers of Gandhiji, some of them have been giving more importance to the outward trappings of Gandhism than to the essence of it. Gandhiji's conception of truth was that though truth is one, every individual is to have his own approach to truth, and every individual had to see it for himself. Therefore, this is what Gandhiji said, what Gandhiji wanted. If we merely follow blindly, the good father that he is, he will really be sorry, though he has departed,—he has left even this House full of lisping babes, who merely do discredit to the Father,—for not having taught them to think individually and rationally. Then, Sir, are we going to say: merely because it is the father's word, as the saying goes, *Baba Vakyam Pramanam*, is that going to be the philosophy of life? We are living in an age, when, in spite of the fact that there are several defects in it, there is one very important thing about the twentieth Century. This is an age of interrogation. The young men of today want to throw a challenge and find out the truth for themselves. As Flaker has said, "Even if God were to burn with hell and fire, I would still ask Him till He answers me why;" I would not follow blindly even if God were to tell me to do so. We are not to be dumb driven cattle; We are to be heroes in this strife. Sir, George Bernard Shaw has said much the same thing, 'examine, test and then accept'. If you are fond of Sanskrit literature, Kalidasa says more or less the same thing:

सन्तः परीक्ष्यान्त तरत् मजन्ते मूढ़ः पर प्रत्ययनेय बुद्धिः।

From answering arguments, let me go to the positive side of my speech. On the practical side, I say prohibition should be made to wait, and wait for long in this unfortunate land of ours which has become fortunate only the other day. On the practical side, Sir, I may quote one great thinker who says that there are

[Shri B. H. Khardekar]

two important fronts in life, first there is the war front, and then there is the front of education. When we will have war, God alone knows; we may have a major war at any time and we must be prepared for that. There is some trouble in Kashmir; there was some in Hyderabad. We have got to be prepared. It must also be remembered that we are a very poor country and we must gather up all the resources that we have, so that we can attend to first things first. In a country where democracy has to flourish, where democracy is in its infancy, the front of education is the most important one. You know the appalling condition of the people so far as education concerned. About sixty to seventy years ago, in several countries free and compulsory primary education was introduced. As a result of freedom, that should be our first business. Only yesterday, we discussed the necessity of having such a clause in the Draft Constitution. In a country like ours, even free compulsory primary education would not be enough, because the poor boy, who goes to plough, forget seven to put his signature after a few years, and so, in proportion, even secondary education for the backward communities, rather I may say for the poor would have to be provided. Sir, we are an infant democracy and if we are going to have really a democratic Government, we must have education. You know the great saying "Democracy without education is hypocrisy without limitation" and we do not want to have such a Government where only a few who know will govern ultimately and we will have a Fascist Government; and if we are going to insist too much today on prohibition, we are going to deprive a number of our good children from receiving proper education and the result would be whereas we aim at establishing a secular democratic State, we are really going to have a religious fascist Government and nothing short of it. I am giving you, Sir, a warning.

Then apart from education, there is a thing like medical health and public health. Most of you are very honest and sincere workers and you have been to villages. Even during my occasional visits I find that the poor villager has absolutely no medical help. There are thousands of lepers who require medical help and if all that tremendous help is to be given, from where is the money to come forth? Therefore, we must have first things first and our great enemy is poverty and unless we pool our resources and put first things first, unless we develop a sense of values, I think we will be in a mess.

Now curiously enough I want to talk to you, Sir, a little about the moral side of prohibition or against it. I recommend to you very strongly a remarkable Chapter in Harold Laski's 'Liberty in the Modern State' which he has devoted against prohibition. I could not get the book, so I cannot quote from it but his main point is that prohibition goes against the very grain of personal liberty. In a free India, Sir, the development of personality to its fullest extent is our aim and by frustrations, prohibition, inhibitions, suppressions we are going to have a stunted growth in the young men. It does not mean that we should encourage them to drink but they will find their mistakes and ultimately liberty—I don't mean by liberty license—would be of considerable use. Then Sir, consider—I am not going to be frivolous here—but consider the shock given to social life,—club life will come to an end—and I may tell you just compare the two things—some friends having discussion may be in the evening or night quite seriously over a glass of butter-milk and as against that an innocent but intellectual discussion over a glass of wine or even beer. The Greeks had it. True philosophers know how to enjoy both the worlds and the foundations of philosophy and science were laid by the Great Greeks. They did not have taboos and suppressions and inhibitions. The real development of personality comes through that. If you were to compare the life in a city like Bombay on dry days and wet days, Sir, on dry days you will find life really dry and dull. I ask

you to see that. You might think this is all for the rich. Everybody that goes to club is not rich but what about the poor? Think of the millions of mill hands working very hard all day. In the evening they like to have a glass or two of toddy which is really nothing but fermented neera and if along with the vitamins he gets a little mirth or joy, why should you deprive him of that? Sir, I would request you to consider the solace and the little comfort that he gets. There are some among us—men like Dr. Ambedkar getting great solace in reading. There are others who like to read novels and enjoy them. There are those who like to play the piano and there are some who would like to have a glass of wine or beer. Now I may draw some distinction here because most of you, I beg to say, would not be knowing how many people after all do drink. I would request the economists and the statisticians to find it but I dare say the figure is not more than 10 per cent and most of you are ignorant of a very important fact that you do not know the essential difference between drinkers and drunkards. Of the 10 per cent that drink not 9 per cent are drunkards. They just drink a glass or two with friends and the 1 per cent that consists of drunkards are hopeless people due to very bad circumstances—there might be innumerable reasons—if you deprive them of drink by law, they will resort to illicit distillation. If even that is not allowed, if your machinery is perfect—but I dare say our machinery is inclined towards bribery and corruption and this will be one more handle for them—but apart from that even if you deprive them of that, they will indulge in drinking poisonous stuff and meet their end even earlier. So, for this 1 per cent of the human population are you going to throw so much of valuable wealth, tons and tons of rupees into the Arabian Sea merely because there is a sort of religious inkling behind. You may have that religious idea that it is impious to drink. Well, Gods were supposed or they are supposed to indulge in Sura. The human beings may indulge in Madira. What harm is there? Then, I may point out that after all if one really does not have bad effects from it, why should we deprive them? Let us consider what India really requires. Now, having prohibition and being very pious are very good and these are very highly developed qualities which even the civilised nations have not been able to bring into practice. We, Sir, lack even common decency and honesty. The Prime Minister of India Pandit Jawaharlal Nehru, the most beloved and most respected, loses a pair of shoes. In European countries the least respected leader would not lose a pair of shoes, if he attends a function. So there is this difference that essential qualities, basic qualities like honestly etc. we must have first. You are a party in majority and you can decide what you like. I don't mean you should stop bringing prohibition but wait for some time—and I may quote the Editor of the Times of India and say that there are things other than liquor that go to the head and power is one. Let not the majority party suffer from it.

Shri Jaipal Singh (Bihar: General): Mr. President, Sir, I do not know whether I shall be in order in suggesting to you that this amendment be postponed until such time as we come to the consideration of the recommendations that the Advisory Committee has made particularly in regard to the Tribal Areas. Now the recommendations of the Advisory Committee as well as the Sub-Committees have not been given a chance for full discussion on the floor of this House. Therefore, I do not at this stage, want to go into details but I am bound to oppose the Resolution and amendments of this sort. We have heard such a lot of pious language about a democratic State, of a secular State, of our being voluntarily opposed to the establishment of theocracy in India. Here, Sir, I submit, by the back door we are trying to interfere with the religious rights of the most ancient people of this country. You may laugh. Excess in every thing is wrong. If you eat too much rice, it is bad for you. There are so many other things that you take in excess. But, if you take anything in its right quantity, it is good for you. Drink certainly is one of the things taken in excess which does no one good, but, let us remember that we should

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not be hasty in putting into the Constitution anything which is going to work for more bitterness than there is already. During our discussions in the Advisory Committee, Maulana Abul Kalam Azad was pleased to put a direct question to me and it was this—"Kya yah mazhabi chij hai". Is it really a religious right? On that occasion, the Chairman of the Advisory Committee, the Honourable Sardar Patel gave me an opportunity to explain what the position was. Now, as far as the Adibasis are concerned, no religious function can be performed without the use of rice beer. The word here used—the phrase used is 'intoxicating drinks'. Sir, that is a very vague way of describing the thing, and, also 'injurious to health'. My friend Prof. Shibban Lal has tried to put forward the argument of economic efficiency. He thinks that if prohibition were installed in this country, the economic efficiency of the workers would be enhanced. I dare say it would be. But what I want to tell him is that it is not merely the industrial workers whom he has particularly in mind, that are affected. I would like to point out to him the position of the very poor people, the Adibasis, and, members who come from West Bengal and other places will bear me out in what I say about the Adibasis who are in such large numbers in West Bengal, Southern Bihar, Orissa and other places. In West Bengal, for instance, it would be impossible for paddy to be transplanted if the Santhal does not get his rice beer. These ill clad men, without even their barest wants satisfied, have to work knee-deep in water throughout the day, in drenching rain and in mud. What is it in the rice beer that keeps them alive? I wish the medical authorities in this country would carry out research in their laboratories to find out what it is that the rice beer contains, of which the Adibasis need so much and which keeps them against all manner of diseases.

Well, Sir, I am not opposing this amendment because I want drink to increase in this country. I am all for seeing to it, and, seeing vigorously to it, that the Adibasis do not injure themselves by this drink habit. But that is quite apart from the religious needs and religious privileges; we shall educate them to lead a life of temperance. I am all for that. But this amendment is a vicious one. It seeks to interfere with my religious right. Whether you put it in the Constitution or not, I am not prepared to give up my religious privileges. *(Hear, hear.)*

Mr. Vice-President : Order, order.

Shri Jaipal Singh : Sir, if you will forgive me, I would rather explain all this when we come to the recommendations which the Advisory Committee has made in regard to the Scheduled Tribes and others. This is not the proper time for me to talk *in extenso*. Here I would only point out to the honourable Members here that it is better not to be hasty, and, I would request you that this amendment be deferred until such time as we come to the recommendations of the Advisory Committee in regard to the Scheduled Tribes and Scheduled Areas; because, if we decide the thing at this stage, we shall be doing ourselves wrong. We shall be unfair to a very important and, at the present moment, politically helpless minority. There are hardly a dozen of them who can speak on behalf of them here, though they are thirty millions. This is a decision which must rest with the wishes of the people themselves. We are going through difficult times. Let us not make matters any more difficult. Sir, I need say nothing more than that I am opposed to this amendment, and my humble request to you would be that the further consideration of this amendment be taken up after we have come to a decision with regard to the Scheduled Tribes and Scheduled Areas.

Shri V. I. Muniswamy Pillai (Madras: General): Mr. Vice-President, Sir, I was strangely surprised today to see two members of the sovereign Body come up here and say that prohibition must be postponed. Let me take my

honourable Friend Mr. Jaipal Singh. He claims to represent the Adibasis—the Hill-tribes and the aborigines. A humble member like myself, coming from the region of the aborigines and Hill-tribes may tell him that there is no such thing as require liquor, toddy, brandy or any such thing, at the time of the ceremonies of the aborigines. I do not know, Sir, whether my friend has ever seen a Toda — a member of the pastoral community, living in the Nilgris. They live there under the worst conditions of the monsoon. In their life they had never seen what alcohol is. Sir, when the Britishers came, they brought in the whisky bottle and when they disappeared, from the administration of this land, we must take it that wine also has disappeared. But it is strange that today my friend Mr. Jaipal Singh had to plead for these unfortunate communities. I may say there are several communities like the Kotahs Irulas, Paniyas, Kurumbas, Badagas, and others who all come under the category of Adibasis in the Province of Madras. But there none of these communities has ever come forward to protest against the authorities that drink must be given back to them. It is strange that my friend who is so sympathetic to the aborigines should plead for drink for them. I may tell him that in actual practice, all these communities have greatly benefited in the province of Madras after the introduction of prohibition. The other friend from Kolhapur has been praising Mahatma Gandhi as the Father of the Nation and all that. But unfortunately he fails to follow what Mahatma Gandhi told us. Of the four constructive programmes, Mahatma Gandhi placed prohibition at the head of all the four. Why? Because he found that the country was going to rack and ruin, and the poor were spending all their earnings on drink and leaving their children and families in utter poverty and want. I am sorry my friend has taken up this attitude and opposed this amendment, so wholesomely brought before this Sovereign Body. The Province of Madras has lost yearly nearly seventeen crores of rupees. But the people of Madras stood up as one man and said, "Never mind about these seventeen crores of rupees. We want the citizens, we want the poor people to be healthy and peaceful." Sir, Prohibition has brought peace and plenty to the province of Madras. It has produced a marked improvement in the physique of the people and also in their economic position. I may tell you that Harijans, the unfortunate communities were driven by the Caste-Hindus and the Mirasdars to lowly occupations and were given their wages not in cash, but chits to liquor vendors that they may go and get drunk. But these things have now disappeared and as the Minister incharge of the portfolio, I can dare say that prohibition has brought peace and plenty to my province. So I support the amendment brought by Prof. Saksena and oppose those friends who are talking about postponing prohibition.

The Honourable Shri B. G. Kher (Bombay: General): Sir, it is rather unfortunate that the very first appearance of our new arrival from Kolhapur should have been made an occasion for attacking what is a very vital directive principle in the shaping of our constitution. Prof. Shibban Lal Saksena has suggested that at the end of Article 38 the following clause may be inserted:

"The State shall endevour to bring about prohibition of the consumption of intoxicating drinks and drugs which are injurious to health."

Shri Mahavir Tyagi : That amendment is my copyright and not Prof. Shibban Lal Saksena's.

The Honourable Shri B. G. Kher : I do not propose to infringe the copyright of the Honourable Mr. Mahavir Tyagi or any other Member who wishes to take the credit of it. I am perfectly willing to give it.

The amendment further says "except for medicinal purposes". From the fact that these gentlemen propose to object to this amendment it is evident that they wish that the State should allow the consumption of intoxicating drinks and drugs which are injurious to health.

[The Honourable Shri B. G. Kher]

I do not wish to speak at length on prohibition because after very deliberate consideration and prolonged discussion most of the provincial governments and most of those who are interested in the progress of this country have accepted the necessity of protecting our people from going to their ruin by the use of intoxicating drugs and liquor. They believe that humanity will not progress on proper lines unless along with intellectual and material progress they give sufficient importance to moral progress and it is too late in the day now to argue that the use of intoxicating drugs and liquor do not affect the moral sense of a person who uses them. The very lamp which shows to you the distinction between right and wrong is extinguished and it is therefore, not a matter of individual liberty, which was one of the arguments which the honourable representative from Kolhapur used. There cannot be individual liberty to commit suicide. Society is interested in every individual's prolonged life therefore I was surprised to find such an amount of ignorance in what today is being done, thought and experienced as a result of the administration of prohibition in the provinces. Instead of getting a large excise revenue and spending it on education, the best education is to teach people to abstain from drink and drugs.

For every single rupee that the State gets by way of revenue from excise society loses three times that money by the increase of crime, by the increase of disease and the loss of efficiency. This has been admitted by economists. The honourable gentleman who championed the cause of Adibasis told us that there ought to be further medical research. Medical research has been made to a considerable extent and people have come to the conclusion that the consumption of spirituous liquors and injurious drugs (the description which has been used in this clause) is admittedly injurious to health. One Honourable Member mentioned Nira. The Bombay Government is opening Nira centres by the hundreds, because Nira before it ferments and becomes toddy is a health-giving drink and therefore we are allowing people to drink Nira. But we are now speaking about intoxicating drinks and drugs which are injurious to health. Is it the contention of those honourable members that the State shall not strive to prohibit the use of drugs and drinks which are injurious to the health of the people? Those who use such hackneyed arguments as that of further medical research, individual liberty or medicinal benefit, I am afraid these people are living in an isolated world of their own, because whichever province (Madras and Bombay for instance) has introduced prohibition, has come to the conclusion that the very people who indulged in the use of these liquors are today benefited so considerably that not a day passes when we do not get letters of gratitude from the members of the family of the labourers and other people who used to drink themselves to death. To say that only 10 percent of society indulge in this and that therefore society need not worry itself about this does not need any further criticism.

I was surprised to hear an Honourable Member who represents the Adibasis attack this amendment as vicious. I am afraid that this is the way in which men's minds are perverted. The very object of introducing this amendment, which I am very happy to find has been accepted by the honourable Dr. Ambedkar who is in charge of the Bill, is to prevent the furtherance of vice. Is it argued that the use of intoxicating liquors and injurious drugs leads to the practice of virtue? I am not quoting Mahatma Gandhi in support of my argument but he has said that he would not attach any importance to any other social reform so long as this question of the prevention of consumption of intoxicating liquors and drugs was not taken up by the State. The very first reform that he enjoined upon all the provinces was the stopping of this vicious thing. In this country almost every section of society, whether it is the Hindus, the Muslims or even Christians, have always looked upon the use of intoxicating liquor and drugs as a vice.....

Shri L. Krishnaswami Bharathi (Madras: General): As a sin.

The Honourable Shri. B. G. Kher: I mean sin. The drinking of liquor is one of the five deadly sins which the *Smritis* have laid down and that was not a matter of bigotry or prejudice but the result of vast experience. Today go to America. I met a number of people who genuinely regretted that they were not able to make prohibition a success. Why were they not able to make a success of it? Simply for the reason that they have gone on too long imbibing the poison and it is too late now for them to go back. But the section of the people who have the good of the community and of their country at heart still desire that it were possible to stop the deterioration of the human race, which is sure to be brought about by the use and by making the use of intoxicating drinks respectable in society. So, though a sin both for the Hindus as also for the Muslim, after the advent of the British the use of intoxicating liquors became a sign of being fashionable, a sign of progress and culture. It is quite true that it is perhaps impossible to eradicate from the face of the earth for good and for ever these three vices—the use of liquor in one shape or other by some few people, the evil of gambling and the evil of prostitution: but it shall be the endeavour of every civilised government to prevent all these three cankers of human society, if it is their object that society should be healthy and happy and moral.

I do not propose to take much time of the House.

Sir, it is entirely due to the fact that our friends from Europe were used to look at liquor in a different way that people in this country began to look upon the use of liquor as respectable. Before the evil becomes so deep—rooted that we also come to the same conclusion as those in Europe and America that it is impossible to prevent our people from drinking, it is time that the State should take up this reform which is not only in the interest of this country but also of the world and of the human race in general.

I was considerably surprised at the argument of the honourable Member representing the Adibasis. Here is Mr. Thakkar who has devoted his whole life to the service of the Adibasis and I am sure he wholeheartedly agrees with the principle of this amendment. I quite agree that these people are accustomed to drink and they will have to be gradually educated but that is what this amendment proposed to do, that is, prohibiting the consumption of intoxicating drinks and drugs which are injurious to health. I do hope the honourable Members do not wish to encourage the use of drinks and drugs which are injurious to the health of the people.

I strongly support the amendment.

Mr. Vice-President : Does the Honourable Member, Dr. Ambedkar, accept the amendment?

The Honourable Dr. B. R. Ambedkar: Yes.

Mr. Vice-President : I ask the indulgence of the House as I have overlooked another amendment. That is No. 81 in list No. 3 — by Sardar Bhopinder Singh Man. Does he propose to move it?

Sardar Bhopinder Singh Man (East Punjab: Sikh): Yes. *[Mr. Vice-President I would like that where these words, namely, "Drinks and drugs" occur, the word "tobacco" also be added between them. Mr. Vice-President, I am aware that in moving this amendment. I would be incurring the displeasure of the influential members of this House and I also feel that I am going against the temper of the majority. In reminding Mr. Tyagi regarding this omission I am submitting it after judging it according to the test laid down by him. He has made out two points, namely, to prohibit those intoxicants that are bad and dangerous for health. Judging by this test we should

* [ ] Translation of Hindustani speech.

[Sardar Bhopinder Singh Man]

see whether it can be classified as an intoxicant or not, or whether it is harmful to health. I have no doubt that tobacco is an intoxicant and is more harmful to health than liquor. This is the considered opinion of the medical men that tobacco has nicotine—a poison—most harmful to health. Take the villagers; they get liquor only off-and-on, but they smoke tobacco day and night, and due to their indolence they let suffer even their important tasks. As far as the economic aspect is concerned, I can assure you that much greater loss is incurred on account of tobacco than by liquor. Not only lakhs but crores of rupees annually flow out of the country on this account. When it is realised that tobacco is in fact a dangerous intoxicant, then I do not see why Mr. Tyagi has left out tobacco while mentioning liquor and other drugs. It is probably because it is consumed by the majority but that is no reason. It is said that cigarette or bidi, if consumed in small quantity, would not be harmful to health. But this leads to another controversy of 'too-much or too less'. Even if a useful thing is consumed in excess, it might prove harmful. My point is that when you are dead against an innocent thing like liquor then why don't you prohibit tobacco also?]

Shri A. V. Thakkar (United State of Kathiawar: Saurashtra): Sir, after the case had been put by my friend Shri Bal Gangadhar Kher I did not want to speak. But I want to speak on two small matters, but those are very important matters. One is this. Mr. Jaipal Singh has said, "Let the Regional Committees or the Advisory Committees of the Adibasis come into existence; ask their opinion and then this amendment should be passed; or this should be postponed till then." That is not a correct attitude for any legislator to take.

Shri Jaipal Singh: What I said was let the Schedule dealing with the Scheduled Tribes and Scheduled Areas come up for discussion here; there was no question of consulting the Regional Council.

Shri A. V. Thakkar: The Advisory Committees are still to come into existence. We do not know whether they will approve of this prohibition of disapprove of it. It should not be taken for granted that they will disapprove of it because Mr. Jaipal Singh disapproves of it.

There is another matter. All Adibasis do not want to drink: they want prohibition. I am talking of the Bhils in Gujrat, in Maharashtra, in West Khandesh and in the Central Provinces. I am talking of the Gonds also of the Central Provinces. I have asked hundreds and thousands of them whether they want drink or whether they want prohibition. Their decided answer to me has been: "Thakkar, you are talking of prohibition; you are talking of doing away with drinks. You are placing these enticements in our path and you are still asking for our opinion. For God's sake have the liquor shops closed and then ask us. We are enticed to go to drink; otherwise we will not." To give you a concrete fact about the Bhils of Panchmahals, amongst whom I have worked for 27 years, even the shops set up by the government of the day had to be closed because of the voluntary abstention of the Bhils from drinking. The shops went dry of their own accord. Nobody would visit the shops, because the Bhils had taken vows not to drink and not to become victims to the liquor shops. The shops had to be auctioned out and nobody would buy them. Therefore, it is too much to say that all Adibasis want this, or want this even as a religious right. Even in the matter of it being a religious right with the Bhils, that was the talk twenty years ago. Now they have stopped talking about it. It is not a religious right with them now.

Mr. Vice-President : May I ask the permission of the House to suspend discussion of this item so that the honourable Sardar Vallabhbhai Patel may have an opportunity of moving the motion which stands against his name?

Honourable Members : Yes.

GOVERNMENT OF INDIA ACT, 1935 (AMENDMENT BILL)

The Honourable Sardar Vallabhbhai J. Patel (Bombay : General): Sir, I beg to move for leave to introduce a Bill to amend the Government of India Act, 1935.

Mr. Vice-President: The question is:

"That leave be granted to introduce a Bill to amend the Government of India Act, 1935."

Maulana Hasrat Mohani (United Provinces : Muslim): I beg to oppose this.

Mr. Vice-President : On what ground?

Maulana Hasrat Mohani : I will make out the reason if you please allow me to have my say. I say that he should not be allowed to introduce the Bill.

Mr. Vice-President : I shall put the matter to vote. The question is:

"That leave be granted to introduce a Bill to amend the Government of India Act, 1935."

The motion was adopted.

Maulana Hasrat Mohani : I strongly protest against this procedure. It is a well-known fact that this House is a packed House.

The Honourable Sardar Vallabhbhai J. Patel : With your leave I now introduce the Bill to amend the Government of India Act, 1935.

Mr. Vice-President : The Bill has been introduced. Now may I ask Sardar Vallabhbhai Patel to give the House some idea of the time when he proposes to move for taking the Bill into consideration? This is required only for the convenience of Honourable Members.

The Honourable Sardar Vallabhbhai J. Patel : It will be after a week.

Mr. Vice-President : Thank you. The House will now resume discussion of article 38 of the Draft Constitution. I now call upon Shri L. N. Sahu to speak.

Article 38 (contd.)

Seth Govind Das (C. P. & Berar : General): I move that the question be now put as far as the clause relating to prohibition is concerned.

Mr. Vice-President : I have already called upon Mr. L.N. Sahu to speak.

Shri Lakshminarayan Sahu (Orissa : General): *[Mr. Vice-President, the subject which we are discussing here today is very important. It is correct that Adibasis are addicted to the habit of drinking as has been stated by Shri Jaipal Singh, but as remarked by Shri Thakkar Baba it is also a fact that they (Adibasis) want to do away with it.

First of all, I would like to point out that the liquor used by Adibasis is of a different kind. It is prepared out of a tree and is named as "Salab Drink". It relaxes them a little but does not produce intoxication. In the words of Keshab Chandra Sen the two great gifts of the Britishers to India are on the one hand, the Bible and on the other hand the bottle. The country lost its all. Shri Keshab Chandra Sen said that Bible was really such a great book that had not the Britishers brought the bottle with them, this country as a whole would have put faith in the Bible. I speak from my experience when I say that wine produce very harmful consequences in our country. Formerly in the town where I have been living for the last 32 years, no one was given to the drink habit. But since the Government started liquor shops all persons began to

* [ ] Translation of Hindustani speech.

[Shri Lakshminarayan Sahu]

drink. My grand-children talk now of other people drinking and I am afraid that they may also take to drinking. As there is now a new order of things as we have attained independence and as it was the wish of Mahatma Gandhi that the word Prohibition should be inscribed in every public place, therefore, I desire Prohibition to be enforced. Is it now wise on Sri Jaipal Singh's part to talk of religious freedom in this context? We had the religious freedom of Sati in our country. Where is it now? Most of such other religious freedoms were abolished according to the conditions of the age. Human sacrifice was permissible amongst the aboriginals, but today that evil custom disappeared under the stress of changed circumstances. Now the Government does not permit human sacrifice. I am talking of aboriginal area. I toured along with Shri Thakkar Baba for about three or four months. In Orissa I toured alone. I found a new feeling amongst the aboriginals of that area. They have got a feeling that one who teaches should not take to drinking and one who goes to school should not also drink. Reading and drinking should never be combined. One who reads does not drink.

Aboriginals have such a nice feeling and the greater the facilities provided to them to cherish this feeling the better it would be for them. It is not fair to talk of drinking as a matter of our religious rights; and that we should fight to preserve it is quite unfair.]

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President. I accept the amendment of Prof. Shibban Lal Saksena subject to a further amendment, namely, that after the word 'and' at the beginning of his amendment (86 of List IV) the words "in particular" be added.

Shri Mahavir Tyagi : I really cannot understand how that amendment can be accepted by the Honourable Dr. Ambedkar. The amendment under discussion is mine.

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment of Mr. Tyagi as amended by the amendment of Prof. Shibban Lal Saksena (Laughter.)

Mr. Vice-President : Mr. Tyagi is a great stickler for rights.

The Honourable Dr. B. R. Ambedkar : Sir, if I may say so, the right really belongs to me, because it is I who drafted the amendment he moved. (Renewed laughter.)

Mr. Vice-President : That puts the matter in a new light.

The Honourable Dr. B. R. Ambedkar : I do not think the House would have found any difficulty in accepting this amendment. Two points have been raised against it. One is by Prof. Khandekar who represents Kolhapur in this Assembly. I am sure that Mr. Khandekar has not sufficiently appreciated the fact that this clause is one of the clauses of an Article which enumerates what are called Directive Principles of Policy. There is therefore no compulsion on the State to act on this principle. Whether to act on this principle and when to do so are left to the State and to public opinion. Therefore, if the State thinks that the time has not come for introducing prohibition or that it might be introduced gradually or partially, under these Directive Principles it has full liberty to act. I therefore do not think that we need have any compunction in this matter.

But Sir, I was quite surprised at the speech delivered by my friend Mr. Jaipal Singh. He said that this matter ought not to be discussed at this stage, but should be postponed till we take up for consideration the report of the Advisory Committee on Tribal Areas. If he had read the Draft Constitution, particularly the Sixth Schedule, paragraph 12, he would have found that ample

provision is made for safeguarding the position of the Tribal people with regard to the question of prohibition. The scheme with regard to the tribal areas is that the law made by the State, whether by a province or by the Centre, does not automatically apply to that particular area. First of all, the law has to be made. Secondly, the District Councils or the Regional Councils which are established under this Constitution for the purposes of the administration of the affairs of these areas are given the power to say whether a particular law made by a province or by the Centre should be applied to that particular region inhabited by the tribal people or not, and particular mention is made with regard to the law relating to prohibition. I shall just read out sub-paragraph (a) of paragraph 12 which occurs on page 184 of the Draft Constitution. It says:

"Notwithstanding anything contained in this Constitution—

(a) no Act of the legislature of the State in respect of any of the matters specified in paragraph 3 of this Schedule as matters with respect to which a District Council or a Regional Council may make laws, and no Act of the Legislature of the State prohibiting or restricting the consumption of any non-distilled alcoholic liquor shall apply to any autonomous district or autonomous region unless in either case the District Council for such district or having jurisdiction over such region by public notification so directs, and the District Council in giving such direction with respect to any Act may direct that the Act shall in its application to such district or region or any part thereof have effect subject to such exceptions or modifications as it thinks fit;"

Now, I do not know what more my friend, Mr. Jaipal Singh, wants than the provision in paragraph 12 of the Sixth Schedule. My fear is that he has not read the Sixth Schedule: if he had read it, he would have realised that even though the State may apply its law regarding prohibition in any part of the country, it has no right to make it applicable to the tribal areas without the consent of the District Councils or the Regional Councils.

Mr. Vice-President : There are three amendments. One is by Mr. Mahavir Tyagi. That is No. 71 in List II. If I read the situation a right, that has been practically withdrawn. Am I right, Mr. Tyagi?

Shri Mahavir Tyagi : I have not withdrawn my amendment. I have only accepted the words which Prof. Shibban Lal Saksena intends to add to my amendment.

Mr. Vice-President : I want to know whether you want that your amendment should be put separately to the vote.

Shri Mahavir Tyagi : Yes, Sir, of course. As I have said, I want to abolish liquor altogether. He wants to add the words "except for medical purposes" Therefore my amendment is the original amendment.

Mr. Vice-President : I understand the situation. I shall now put to the vote the amendment of Mr. Mahavir Tyagi as modified by Professor Shibban Lal Saksena and further modified by Dr. Ambedkar.

Shri Mahavir Tyagi : On a point of order, Dr. Ambekar has added the word "particular" but he has not taken my permission.

Mr. Vice-President : I take your permission on behalf of Dr. Ambedkar.

Shri Mahavir Tyagi : I accept his amendment also, Sir.

Mr. Vice-President : This particular amendment as amended is now put to the vote.

The amendment was adopted.

Mr. Vice-President : Then, there is another amendment which is No. 81 in List III moved by Sardar Bhopinder Singh Man to insert the word 'tobacco' between the words 'drinks' and 'drugs'. I now put it to the vote.

The amendment was negatived.

Mr. Vice-President : I now put to the vote article 38, as amended.

The motion was adopted.

Article 38, as amended, was added to the Constitution.

Mr. Vice-President : We now come to new article 38-A—amendment No. 1002 standing in the names of Pandit Thakur Dass Bhargava and Seth Govind Das.

Article 38-A

Seth Goving Das : Sir, I have an amendment to the amendment of Pandit Thakur Dass Bhargava which I will move after Pandit Thakur Dass Bhargava has moved his amendment.

Pandit Thakur Dass Bhargava (East Punjab : General): *[Mr. President, the words of the amendment No. 72 which I am moving in place of amendment No. 1002, are as follows:—

"That for amendment No. 1002 of the lists of amendments to 38-A the following be substituted:—

'38-A. The State shall endeavour to organise agriculture and animal husbandry on modern and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cow and other useful cattle, specially milch and draught cattle and their young stock'."

At the very outset I would like to submit that this amendment.....]

Shri S. Nagappa (Madras : General): Sir, on a point of order, my honourable Friend, who can speak freely in English, is deliberately talking in Urdu or Hindustani which a large number of South Indians cannot follow.

Mr. Vice-President : The honourable Member is perfectly entitled to speak in any language he likes but I would request him to speak in English though he is not bound to speak in English.

Pandit Thakur Dass Bhargava : I wanted to speak in Hindi which is my own language about the cow and I would request you not to order me to speak in English. As the subject is a very important one, I would like to express myself in the way in which I can express myself with greater ease and facility. I would therefore request you kindly to allow me to speak in Hindi.

*[Mr. Vice-President, with regard to this amendment I would like to submit before the House that in fact this amendment like the other amendment, about which Dr. Ambedkar has stated, is his manufacture. Substantially there is no difference between the two amendments. In a way this is an agreed amendment. While moving this amendment, I have no hesitation in stating that for people like me and those that do not agree with the point of view of Dr. Ambedkar and others, this entails, in a way, a sort of sacrifice. Seth Govind Das had sent one such amendment to be included in the Fundamental Rights and other members also had sent similar amendments. To my mind it would have been much better if this could have been incorporated in the Fundamental Rights, but some of my Assembly friends differed and it is the desire of Dr. Ambedkar that this matter, instead of being included in Fundamental Rights should be incorporated in the Directive Principles. As a matter of fact, it is the agreed opinion of the Assembly that this problem should be solved in such a manner that the objective is gained without using any sort of coercion. I have purposely adopted this course, as to my mind, the amendment fulfils our object and is midway between the Directive Principles and the Fundamental Rights.

I do not want that due to its inclusion in the Fundamental Rights, non-Hindus should complain that they have been forced to accept a certain thing against their will. So far as the practical question is concerned, in my opinion, there will be absolutely no difference if the spirit of the amendment is worked out faithfully, wheresoever this amendment is placed. With regard to Article 38 which the House has just passed, I would like to state that Article 38 is like a body without a soul. If you fail to pass Article 38-A which is the proposed

* [ ] Translation of Hindustani speech.

amendment, then Article 38 will be meaningless. How can you improve your health and food position, if you do not produce full quota of cereals and milk?

This amendment is divided into three parts. Firstly, the agriculture should be improved on scientific and modern lines. Secondly, the cattle breed should be improved; and thirdly, the cow and other cattle should be protected from slaughter. To grow more food and to improve agriculture and the cattle breed are all inter-dependent and are two sides of the same coin. Today, we have to hang our head in shame, when we find that we have to import cereals from outside. I think our country is importing 46 million tons of cereals from outside. If we calculate the average of the last twelve years, namely, from 1935 to 1947, then it would be found that this country has produced 45 million tons of cereals every year. Therefore, it is certain that we are not only self-sufficient but can also export cereals from our country. If we utilize water properly, construct dams, and have proper change in the courses of rivers, use machines and tractors, make use of cropping and manuring, then surely the production will increase considerably. Besides all these, the best way of increasing the production is to improve the health of human beings and breed of cattle, whose milk and manure and labour are most essential for growing food. Thus the whole agricultural and food problem of this country is nothing but the problem of the improvement of cow and her breed. And therefore I would like to explain to you by quoting some figures, how far cattle-wealth has progressed and what is the position today.

In 1940, there were 11,56,00,960 oxen in India and in 1945 only 11,19,00,000 were left. That is to say, during these five years, there was a decrease of 37 lacs in the number of oxen. Similarly the number of buffaloes in 1940, was 3,28,91,300 and in 1945, this figure was reduced to 3,25,44,400. According to these figures, during these five years, their number was reduced by four lacs. Thus during these five years there was decrease of 41 lacs in the sum total of both the above figures taken together.

Besides this, if we see the figures of the slaughtered cattle in India we find that in 1944, 60,91,828 oxen were slaughtered, while in 1945 sixty five lacs were slaughtered *i.e.*, four lakhs more. In the same year 7,27: 189 buffaloes were slaughtered. I do not want to take much of your time. If you wish to see latest figures then I have got them upto 1945. You can see them. I have got figures for Bombay and Madras. A look at these figures will show that there has been no decrease in their slaughter, rather it is on the increase. Therefore, I want to submit before you that the slaughter of cattle should be banned here. Ours is an agricultural country and the cow is '*Kam-Dhenu*' to us—fulfiller of all our wants. From both points of view, of agriculture and food, protection of the cow becomes necessary. Our ancient sages and Rishis, realising her importance, regarded her as very sacred. Here, Lord Krishna was born, who served cows so devotedly that to this day, in affection he is known as "Makhan Chor". I would not relate to you the story of Dalip, how that Raja staked his own life for his cow. But I would like to tell you that even during the Muslim rule, Babar, Humayun, Akbar, Jahangir and even in the reign of Aurangzeb, cow slaughter was not practised in India; not because Muslims regarded it to be bad but because, from the economic point of view, it was unprofitable.

Similarly in every country, in China, cow-slaughter is a crime. It is banned in Afghanistan as well. A year ago, a similar law was passed in Burma, before that, under a certain law cattle only above fourteen years of age could be slaughtered. But eventually, the Burma Government realised that this partial ban on slaughter was not effective. On the pretext of useless cattle many useful cattle are slaughtered. I have read in newspapers that the Pakistan Government has decided to stop the export of cattle from Western Pakistan, and they too have enforced a partial ban on slaughter of animals. In the present conditions in our country, cow-breeding is necessary, not for milk supply alone, but

[Pandit Thakur Dass Bhargava]

also for the purposes of draught and transport. It is no wonder that people worship cow in this land. But I do not appeal to you in the name of religion; I ask you to consider it in the light of economic requirements of the country. In this connection I would like to tell you the opinion of the greatest leader of our country—the Father of the Nation — on the subject. You know the ideas of revered Mahatmaji on this topic. He never wanted to put any compulsion on Muslims or non-Hindus. He said, "I hold that the question of cow-slaughter is of great moment—in certain respects of even greater moment—than that of Swaraj. Cow-slaughter and man-slaughter are, in my opinion, two sides of the same coin."

Leaving it aside, I want to draw your attention to the speech of our President, Dr. Rajendra Prasad. After this the Government of India, appointed a committee—an expert representative committee—to find out whether for the benefit of the country the number of cattle can be increased, and whether their slaughter can be stopped. The Committee has unanimously decided in its favour. Seth Govind Das was also a member of the Committee. The committee unanimously decided that cattle slaughter should be banned. Great minds were associated with the said committee. They examined the question from the economic view-point; they gave thought to the unproductive and unserviceable cattle also. After viewing the problem from all angles they came to the unanimous decision that slaughter of cattle should be stopped. That resolution relates not to cows alone. Slaughtering of buffaloes, which yield 50 per cent of our milk supply, and of the goats which yield 3 per cent of our milk supply, and also bring a profit of several crores, is as sinful as that of cows. In my district of Hariana, a goat yields 3 to 4 seers of milk. Perhaps a cow does not yield that much in other areas. Therefore I submit that we should consider it from an economic point of view. I also want to state that many of the cattle, which are generally regarded as useless, are not really so. Experts have made an estimate of that, and they came to the conclusion that the cattle which are regarded as useless are not really so, because we are in great need of manure. A cow, whether it be a milch-cow or not, is a moving manure factory and so, as far as cow is concerned, there can be no question of its being useless or useful. It can never be useless. In the case of cow there can be no dispute on the point.] (*Hearing the bell being rung.*) Am I to stop?

Mr. Vice President : Yes, I am asking you to stop.

Pandit Thakur Dass Bhargava : Could you give me two minutes more?

Mr. Vice-President : You have already had 25 minutes.

Pandit Thakur Dass Bhargava : *[As the Vice-President has ordered me to finish off, I shall not go into the details; otherwise I can prove by figures that the value of the refuse and urine of a cow is greater than the cost of her maintenance. In the end, I would wind up by saying that there might be people, who regard the question of banning cow-slaughter as unimportant, but I would like to remind them that the average age in our country is 23 years, and that many children die under one year of age! The real cause of all this is shortage of milk and deficiency in diet. Its remedy lies in improving the breed of the cow, and by stopping its slaughter. I attach very great importance to this amendment, so much so that if on one side of the scale you were to put this amendment and on the other all these 315 clauses of the draft, I would prefer the former. If this is accepted, the whole country would be, in a way, electrified. Therefore, I request you to accept this amendment unanimously with acclamation.]

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* [ ] Translation of Hindustani speech.

Seth Govind Das : *[Mr. President, the amendment moved by Pandit Thakur Dass Bhargava appears to be rather inadequate as a directive in its present form. I therefore move my amendment to his amendment. My amendment runs thus:

"That in amendment No. 1002 of the list of Amendments in article 38-A the words 'and other useful cattle, specially milch cattle and of child bearing age, young stocks and draught cattle' be deleted and the following be added at the end:

'The word "cow" includes bulls, bullocks, young stock of genus cow'."

The object of the amendment is, I hope, quite clear from its words. The amendment moved by Pandit Bhargava prohibits the slaughter of cow and other useful cattle but according to it unfit or useless cows may be slaughtered. But the object of my amendment is, as far as cows are concerned, to prohibit the slaughter of any cow, be it useful or useless and in my amendment word 'cow' includes bulls, bullocks and calves all that are born of cows. As Pandit Thakur Dass told you, I had submitted this earlier to be included in Fundamental Rights but I regret that it could not be so included. The reason given is that Fundamental Rights deal only with human beings and not animals. I had then stated that just as the practice of untouchability was going to be declared an offence so also we should declare the slaughter of cows to be an offence. But it was said that while untouchability directly affected human beings the slaughter of cows affected the life of animals only—and that as the Fundamental Rights were for human beings this provision could not be included therein. Well, I did not protest against that view and thought it proper to include this provision in the Directive Principles. It will not be improper, Sir, if I mention here, that it is not for the first time that I am raising the question of cow protection. I have been a member of the Central Legislature for the last twenty-five years and I have always raised this question in the Assembly and in the Council of State. The protection of cow is a question of long standing in this country. Great importance has been attached to this question from the time of Lord Krishna. I belong to a family which worships Lord Krishna as "*Ishtadev*". I consider myself a religious minded person, and have no respect for those people of the present day society whose attitude towards religion and religious minded people is one of contempt. It is my firm belief that *Dharma* had never been uprooted from the world and nor can it be uprooted. There had been unbelievers like *Charvaka* in our country also but the creed of *Charvaka* could never flourish in this country. Now-a-days the Communist leaders of the West also and I may name among them Karl Marx, Lenin, Stalin, declare religion "the opium of the People". Russia recognised neither religion nor God but we have seen that in the last war the Russian people offered prayers to God in Churches to grant them victory. Thus it is plain from the history of ancient times as also from that of God-denying Russia that religion could not be uprooted.

Moreover, cow protection is not only a matter of religion with us; it is also a cultural and economic question. Culture is a gift of History. India is an ancient country; consequently no new culture can be imposed on it. Whosoever attempts to do so is bound to fail; he can never succeed. Ours is a culture that has gradually developed with our long history. Swaraj will have no meaning for our people in the absence of a culture. Great important cultural issues—for instance the question of the name of the country, question of National Language, question of National Script, question of the National Anthem and question of the prohibition of cow slaughter—are before this Assembly and unless the Constituent Assembly decides these questions according to the wishes of the people of the country, Swarajya will have no meaning to the common people of our country. I would like to submit, Sir, that a referendum be taken on these issues and the opinion of the people be ascertained. Again, cow protection is

* [ ] Translation of Hindustani speech.

[Seth Govind Das]

also a matter of great economic importance for us. Pandit Thakur Dass Bhargava has shown to you by quoting statistics how the cattle wealth of the country is diminishing. This country is predominantly agricultural in character. I would give some figures here regarding the position of our cattle wealth. In 1935 there were one hundred nineteen million and four hundred ninety one thousand (11,94,91,000) heads of cattle. In 1940 their number came down to one hundred fifteen million and six hundred ten thousand, and in 1945 it further came down to one hundred eleven million and 9 hundred thousand. While on one side our population is increasing our cattle wealth is decreasing. Our Government is carrying on a Grow More Food Campaign. Millions of rupees are being spent on this campaign. This campaign cannot succeed so long as we do not preserve the cows. Pandit Thakur Dass has given us some figures to show the number of cows slaughtered in our country. I would like to quote here some figures from the Hide and Skin Report of the Government of India. Fifty two lakhs of cows and thirteen lakhs of buffaloes are slaughtered every year in this country. It shows in what amazing numbers cattle are slaughtered here. Thirty six crores acres of land are under cultivation here. These figures also include the land under cultivation in Pakistan. I have to give these figures because we have no figure of the land under cultivation in India since the secession of Pakistan from our country. We have six crores bullocks for the cultivation of the land. A scientific estimate would show that we need another one and a half crore of bullocks to keep this land under proper cultivation.

So far as the question of milk supply is concerned I would like to place before you figures of milk supply of other countries as compared to that of our country.

In New Zealand milk supply *per capita* is 56 ounces, in Denmark 40, in Finland 63, in Sweden 61, in Australia 45, in Canada 35, in Switzerland 49, in Netherland 35, in Norway 43, in U.S.A. 35, in Czechoslovakia 36, in Belgium 35, in Australia 30, in Germany 35, in France 30, in Poland 22, in Great Britain 39 and in India it is only 7 ounces. Just think what will be the state of health of the people of a country where they get only seven ounces of milk per head. There is a huge infantile mortality in this country. Children are dying like dogs and cats. How can they be saved without milk?

Thus even if we look at this problem from the economic point of view, we come to the conclusion that for the supply of milk and agriculture also, the protection of the cow is necessary.

I would like to place before the House one thing more. It has been proved by experience that whatever laws we may frame for the prevention of the slaughter of useful cattle, their object is not achieved. In every province there are such laws. There people slaughter cattle and pay some amount towards fines and sometimes escape even that. Thus our cattle wealth is declining day by day.

Sometime back there was a law like that in Burma but when they saw that cattle could not be saved under it, they banned cow slaughter altogether.

I would like to emphasise one point to my Muslim friends also. I would like to see my country culturally unified even though we may follow different religions. Just as a Hindu and a Sikh or a Hindu and a Jain can live in the same family, in the same way a Hindu and a Muslim can also live in the same family. The Muslims should come forward to make it clear that their religion does not compulsorily enjoin on them the slaughter of the cow. I have studied a little all the religions. I have read the life of Prophet Mohammad Sahib. The Prophet never took beef in his life. This is a historic fact.

Pandit Thakur Das Bhargava pointed out just now that from the time of Akbar to that of Aurangzeb, there was a ban on cow slaughter. I want to tell you what Babar, the first Moghul Emperor told Humayun. He said: "Refrain from cow slaughter to win the hearts of the people of Hindustan."

Pandit Thakur Dass Bhargava just now referred to the Committee constituted by the Government of India for this purpose. It recommended that cow slaughter should be totally banned. I admit that the Government will require money for the purpose. I want to assure you that there will be no lack of money for this purpose. If the allowance given to cattle-pounds and Goshalas is realised from the people by law, all the money needed would be realised. Even if the Government want to impose a new tax for this purpose every citizen of this country will be too glad to pay it. Therefore our Government should not raise before us the financial bogey so often raised by the British Government. I have travelled a little in this country and I am acquainted with the views of the people.]

Sir, I wish to say a few words in English to my South Indian friends.

Mr. Vice-President : I am afraid that if I give you that permission, other speakers will not have sufficient time to speak. You asked for ten minutes and I have given you fifteen minutes plus four. If you insist on more time I am prepared to give it but you could have addressed them in English.

Prof. Shibban Lal Saksena—Amendment No. 87 of List 4.

Shri R. V. Dhulekar (United Provinces: General): Sir, I have sent a little request for permission to speak.

Mr. Vice-President : If honourable members will kindly take their seats, I shall be able to say something. We have adopted a certain procedure. The amendments have to be move done after another.

Mr. Shibban Lal Saksena.

Prof. Shibban Lal Saksena : Sir, I had given notice of an amendment in which I desired that cow slaughter should be banned completely. But after the agreement arrived at about Pt. Thakur Dass Bhargava's amendment, I waive my right to move my amendment.

An Honourable Member : But what is the amendment?

Prof. Shibban Lal Saksena : It is No. 87 in list IV, but I am not moving it.

Mr. Vice-President : In that case you cannot speak.

Prof. Shibban Lal Saksena : But there is no other amendment. I may speak on the clause now.

Pandit Balkrishna Sharma (United Provinces: General): Sir, may we know where we stand? Is the Honourable Member moving his amendment or is he taking part in the general discussion of the clause?

Prof. Shibban Lal Saksena : I am speaking generally on the clause.

Mr. Vice-President : In that case, you must wait till Shri Ram Sahai moves his amendment also No. 88, list IV.

Shri Algu Rai Shastry (United Provinces: General): On a point of order. Professor Saksena has copied out the whole of Pt. Thakur Dass' amendment and added only one or two words. In such cases only those new words should be taken as his amendment, and the whole of the amendment should not be owned by him.

Mr. Vice-President : But he has said he will be taking part in the general discussion only.

Now, Shri Ram Sahai.

Shri Ram Sahai (United State of Gwalior-Indore-Malwa: Madhya Bharat): *[Mr. Vice-President. In regard to this matter I have already tabled an amendment seeking to add these words in article 9 of Part III "The State shall

*[ ] Translation of Hindustani speech.

[Shri Ram Sahai]

ban the slaughter of cows by law". But for the very reasons that led Mr. Bhargava not to move his amendment, I have also now decided not to move mine. Still there is another amendment in my name in Part IV of the Draft Constitution.

My only object in tabling this amendment was to secure complete prohibition of the slaughter of cows. But I find here that a section of the House does not like this. I also do not like, on my part, to make any proposal that may not receive the unanimous acceptance of the House nor a proposal which may lead to the curtailment of the freedom of the provinces in this matter. Under the Directive Principles of State Policy, Provinces will have the power to stop cow slaughter totally or partially. Though there is a ban in one form or another on the slaughter of cows, in almost all countries of the world, yet I would not emphasise that fact before you.

I hope Honourable Dr. Ambedkar will appreciate and accept the amendment moved by Mr. Bhargava because it is on the basis of the assurance to this effect given by him that the amendment has been moved as a compromise.

In view of that assurance I am not moving my amendment.]

Mr. Vice-President : There is another amendment which I had overlooked. It is No. 1005, standing in the name of Shri Ranbir Singh Chaudhari.

Chaudhari Ranbir Singh (East Punjab: General): Sir, I do not propose to move that amendment. But I would like to speak on the general clause.

Mr. Vice-President : All right. Professor Saksena.

Prof. Shibban Lal Saksena : Sir, there are two aspects to this question. One is the religious aspect and the other is the economic aspect. I shall first deal with the religious aspect. I am not one of those men who think that merely because a thing has a religious aspect, it should not be enacted as law. I personally feel that cow protection, if it has become a part of the religion of the Hindus, it is because of its economic and other aspects, I believe that the Hindu religion is based mostly on the principles which have been found useful to the people of this country in the course of centuries. Therefore, if thirty crores of our population feel that this thing should be incorporated in the laws of the country, I do not think that we as an Assembly representing 35 crores should leave it out merely because it has a religious aspect. I agree with Seth Govind Das that we should not think that because a thing has a religious significance, so it is bad. I say, religion itself sanctifies what is economically good. I wish to show how important cattle preservation is for us. Mahatma Gandhi in fact, has written in so many of his articles about his belief that cow protection was most essential for our country. From the scientific point of view, I wish to point out that Dr. Wright who is an expert on the subject in his report on our National Income says that out of 22 crores of national income per annum, about eleven crores are derived from the cattle wealth of India, representing the wealth of most of our people who live in the villages.

Sometimes it is supposed that we have too many cattle and that most of them are useless, and therefore, they must be slaughtered. This is a wrong impression. If you compare the figures, you will find that in India there are only 50 cattle per 100 of the population, whereas in Denmark it is 74, in U.S.A. 71, in Canada 80, in Cape Colony 120 and in New Zealand 150. So in New Zealand, there are about three times the number of cattle per head of population than we have here. So, to say that we have too many cattle is not right. As for useless cattle, scientists say that their excreta has value as manure and its cost is more than the expenditure on the upkeep of such cattle.

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*[ ] Translation of Hindustani speech.

Then again, our agriculture depends mostly on cattle, as it is mostly of small holdings where the cultivators can not make use of tractors and other implements. They depend on bullocks, and if you compare the figure of bullocks, you will find that although we have got an area of $33^1/_2$ million acres of land to cultivate, we have only six crores of bullocks which works at about 16 bullocks per 100 acres of land which is quite insufficient. Therefore, even from the point of view of our agricultural economy, we need a very large number of bullocks. It has been estimated that to meet our requirements, we would require about eleven crores more bullocks.

Then, coming to our requirements of milk and other products, if we compare our milk consumption with that of other countries, we find that it is only 5 oz. per head, and that is very little, compared to the figures of other countries. Therefore I think that we must have this amendment incorporated in our Constitution.

The other important evils in our country are infant mortality and tuberculosis which have their origin in deficient milk diet. These evils can be remedied only if we preserve our cattle and improve their breed, which is the purposes of this amendment. I therefore think that this amendment should be accepted.

Then there is the use of Vanaspati ghee, which has become an economic necessity, because there is no pure ghee available anywhere. If we are able to give effect to this amendment we can improve the breed of cattle and then we will be able to do away with the use of Vanaspati, which is so injurious to the health of the nation.

Also from the point of view of the requirements of our climate this amendment is very necessary. I think the amendment is very well worded. It says that we shall try to "organise agriculture and animal husbandry on modern and scientific lines and in particular take steps to preserve, protect, and improve the useful breeds of cattle and ban the slaughter of cow and other useful cattle, especially milch cattle and of child-bearing age, young stocks and draught cattle". I think the amendment of Seth Govind Das is included in it. I am sure, representatives of people elected on adult suffrage will surely incorporate in their State laws legislation which will give effect to this amendment and we shall then have in our land no cow slaughter. I therefore support this amendment wholeheartedly.

Dr. Raghu Vira (C.P. and Berar: General): Sir, I think it my most bounden duty in this House to express the feelings, feelings which no words can really convey, that not a single cow shall be slaughtered in this land.

गौर अहन्या भवति। न हिंसितव्या। न हिंसितव्या।
यः कश्चिद् गां हिनस्ति महापातकी भवति।

These sentiments which were expressed thousands of years age still ring in the hearts of tens of millions of this land. My friends tell me that it is an economic question, that Muslim kings have supported the preservation of cows and banned the killing of the cows. That is all right. But when we attain freedom, freedom to express ourselves in every form and manner—our Preamble says 'There shall be liberty of expression'—is that merely expression of thought or is that the expression of our whole being? This country evolved a civilization and in that civilization we gave prominent place to what we call *Ahimsa* or non-killing and non-injury, not merely of human beings but also of the animal kingdom. The entire universe was treated as one and the cow is the symbol of that oneness of life and are we not going to maintain it? *Brahma hatya* and *go-hatya*—the killing of the learned man, the scientist, the philosopher or the sage and the killing of a cow are on a par. If we do not allow the killing of

[Dr. Raghu Vira]

a scientist or a sage in this land it shall certainly be ordained by this House that no cow shall be killed. I know in my childhood we were not allowed to drink until the cow has had its drink and we were not allowed to eat till the cow has had its meal. The cow takes precedence over the children of the family, because she is the mother of the individual, she is the mother of the nation. Ladies and gentlemen in this House, I appeal to you to look back with serenity and to search your souls. We are representatives of millions of our people.....

Mr. Vice-President : The Honourable Member must address the Chair. This is not a public platform.

Dr. Raghu Vira : Through you, Sir, I wish to convey the feeling of this House and other people of this country that the cow shall be saved in the interests of the country and in the interests of our culture. And with these words, Sir, I take your leave.

Shri R. V. Dhulekar : Sir, I always believed from my childhood that India had a mission and because India had a mission therefore I wanted the independence of this country. Many millions of the people, who died for this country, also like me had believed that India had a mission, and what was that mission? The mission was that we should go about the world and carry the message of peace, love, freedom and *Abhaya* (freedom from fear) to every body in the world. When independence was achieved I was happy to believe that I shall carry out my mission, that I shall carry to the world this message, *viz.,* that India has got no grudge against any country in the world, it has no expansionist ideas but that it is going to save the whole world from the danger of internecine war, bloodshed and many other ills that humanity is suffering from. In the same way and for the same purpose I appeal to the House to discuss this subject from a dispassionate point of view. It is not the crumbs, the loaves and fishes that we are fighting for. Loaves and fishes were left behind by some people thirty years back and by some others fifty years back. We did not want to achieve this independence for loaves and fishes. Those who want them are welcome but men like us who have a mission or a message for the world cannot love loaves and fishes. We do not want ambassadorship, premier ships, ministerships or wealth. We want that India should declare today that the whole human world as well as the whole animal world is free today and will be protected. The cow is a representative of the animal kingdom, the *peepal* tree is the representative of the vegetable kingdom, the touchstone or the *shaligram* is the representative of the mineral world. We want to save and give peace and protection to all those four worlds and therefore it is that the Hindus of India have put these four things as representatives of this world—the human being, the cow, the *peepal* and the *shaligram*. All these were worshipped because we wanted to protect whole humanity. Our *Upanishad* says:

ईशावास्यमिदम् सर्वम् यात्किंचित् जगत्यां जगत।
तेन त्यक्तेन भुञ्जीथाः मागृधः कस्य स्वित् धनम्॥

We do not want this property, we do not want this food; we do not want this raiment—not because we cannot take it; not because we are cowards; not because we cannot carry Imperialism to the four corners of the world; but we may not have it because we see the whole world identical with our own soul. So our humanity which resides in this *Bharatvarsha* for several thousand years has marched forward and has taken the cow within the fold of human society. Some people here talked to me and said "You say that you want to protect the cow and want it to be included in the Fundamental Rights. Is the protection of the cow a fundamental right of a human being? Or is it the fundamental right of the cow?" I replied to them and tell them suppose it is a question of saving your mother or protecting your mother. Whose fundamental right is

it? Is it the fundamental right of the mother? No. It is my fundamental right to protect my mother, to protect my wife, my children and my country. In the Fundamental Rights you have said that you will give justice, equity and all these things. Why? Because you say "it is your fundamental right to have justice". What does that justice mean? It means that we shall be protected, our families shall be protected. And our Hindu society, or our Indian society, has included the cow in our fold. It is just like our mother. In fact it is more than our mother. I can declare from this platform that there are thousands of persons who will not run at a man to kill that man for their mother or wife or children, but they will run at a man if that man does not want to protect the cow or wants to kill her.

With these few words, I wish to say that these two amendments which have been put forward by Mr. Bhargava and Seth Govind Das should be dealt with dispassionately. I shall appeal to you that only that amendment should be passed which is very clear. If Mr. Bhargava's amendment is doubtful, then certainly Seth Govind Das's amendment should be passed.

Mr. Vice-President : Following my usual practice I must give an opportunity to people who hold different views from the majority view and I am therefore calling upon Mr. Lari to speak.

Mr. Z. H. Lari (United Provinces : Muslim): Mr. Vice-President, I appreciate the sentiments of those who want protection of the cow—may be on religious grounds or may be in the interests of agriculture in this country. I have come here not to oppose or support any of the amendments but to request the House to make the position quite clear and not to leave the matter in any ambiguity or doubt. The House, at the same time, must appreciate that Mussalmans of India have been, and are, under the impression that they can, without violence to the principles which govern the State, sacrifice cows and other animals on the occasion of *Bakrid*. It is for the majority to decide one way or the other. We are not here to obstruct the attitude that the majority community is going to adopt. But let there not linger an idea in the mind of the Muslim public that they can do one thing, though in fact they are not expected to do that. The result has been, as I know in my own Province on the occasion of the last *Bakrid*, so many orders under Section 144 in various places, districts and cities. The consequence has been the arrests of many, molestation of even more, and imprisonment of some. Therefore, if the House is of the opinion that slaughter of cows should be prohibited, let it be prohibited in clear, definite and unambiguous words. I do not want that there should be a show that you could have this thing although the intention may be otherwise. My own submission to this House is that it is better to come forward and incorporate a clause in Fundamental Rights that cow slaughter is henceforth prohibited, rather than it being left vague in the Directive Principles, leaving it open to Provincial Governments to adopt it one way or the other, and even without adopting definite legislation to resort to emergency powers under the Criminal Procedure. In the interests of good-will in the country and of cordial relations between the different communities I submit that this is the proper occasion when the majority should express itself clearly and definitely.

I for one can say that this is a matter on which we will not stand in the way of the majority if the majority wants to proceed in a certain way, whatever may be our inclinations. We feel—we know that our religion does not necessarily say that you must sacrifice cow; it permits it. The question is whether, considering the sentiments that you have, considering the regard which the majority have for certain classes of animals, do they or do they not permit the minority—not a right—but a privilege or a permission which it at present has? I cannot put it higher. I won't class it as interference with my religion. But I do not want that my liberty should be taken away, and especially the peaceful celebration of any festival should be marred by the promulgation of

[Mr. Z. H. Lari]

orders under Section 144. I have come only to plead that. Therefore, let the leaders of the majority community here and now make it clear and not leave it to the back-benchers to come forward and deliver sermons one way or the other. Let those who guide the destinies of the country, make or mar them, say definitely "this is our view", and we will submit to it. We are not going to violate it. This is the only thing I have come to say. I hope you will not misunderstand me when I say this. It is not due to anger, malice or resentment but it is out of regard for cordial relations between the communities, and what is more, due to the necessity of having a clear mind that I say this. Henceforward the Muslim minority must know where they stand so that they may act accordingly, and there be no occasion for any misunderstanding between the majority and the Muslims on this point.

In view of what I have said, I would not oppose nor support any of the amendments, but I would invite a very clear and definite rule instead of the vague phraseology of the clauses which have been put forward. It proceeds to say that we should have modern and scientific agriculture. Modern and scientific agriculture will mean mechanisation and so many other things. The preceding portion of the clause speaking about modern and scientific agriculture and the subsequent portion banning slaughter of cattle do not fit in with each other. I appreciate the sentiments of another member who said "this is our sentiment, and it is out of that sentiment that we want this article". Let that article be there, but for God's sake, postpone the discussion of the article and bring it in clear, definite and unambiguous terms so that we may know where we stand and thereafter there should be no occasion for any misunderstanding between the two communities on this issue which does not affect religion but affects practices which obtain in the country.

Syed Muhammad Saiadulla (Assam : Muslim): Mr. Vice-President, Sir, the subject of debate before the House now has two fronts, the religious front and the economic front. Some who want to have a section in our Constitution that cow killing should be stopped for all time probably base it on the religious front. I have every sympathy and appreciation for their feelings; for, I am student of comparative religions. I know that the vast majority of the Hindu nation revere the cow as their goddess and therefore they cannot brook the idea of seeing it slaughtered. I am a Muslim as everyone knows. In my religious book, the Holy Qoran, there is an injunction to the Muslims saying—

"La Ikraba fid Din", or

or, there ought to be no compulsion in the name of religion. I therefore do not like to use my veto when my Hindu brethren want to place this matter in our Constitution from the religious point of view. I do not also want to obstruct the framers of our Constitution, I mean the Constituent Assembly if they come out in the open and say directly: "This is part of our religion. The cow should be protected from slaughter and therefore we want its provision either in the Fundamental Rights or in the Directive Principles."

But, those who put it on the economic front, as the honourable Member who spoke before me said, do create a suspicion in the minds of many that the ingrained Hindu feeling against cow slaughter is being satisfied by the backdoor. If you put it on the economic front, I will place before you certain facts and figures which will show that the slaughter of cows is not as bad as it is sought to be made out from the economic point of view. I have very vast and varied experience of the province of Assam and therefore I will quote you figures from Assam only. In the year 1931, under the orders of the then Central Government a census of the cattle wealth of the province was undertaken. We found that in 1931, Assam had 70 lakhs of cattle as against a human population of 90 lakhs. It will stagger my friends from the other parts

of India when I place before them the fact that the average yield of an Assam cow is but a quarter seer of milk daily and that it is so puny in stature that its draught power is practically nil. Assam is dependent for her draught cattle on the province of Bihar. During the last war, when there was tremendous difficulty as regards transport, we could not get any cattle from Bihar, with the result that we were compelled to use our own small cattle for the purpose of ploughing. In order to conserve this cattle, the Government of Assam passed a law prohibiting the slaughter of cattle in milch or cattle which could be used for the purpose of draught. But, wonder of wonders, I personally found that droves of cattle were being taken to the military depots for being slaughtered not by Muslims, but by Hindus who had big *"sikhas"* on their heads. When I saw this during my tours I asked those persons why, in spite of their religion and in spite of Government orders, they were taking the cattle to be slaughtered. They said: "Sir, these are all unserviceable cattle. They are all dead-weight on our economy. We want to get ready cash in exchange for them".

My friend Seth Govind Das mentioned the case of cattle that were killed. I questioned him privately. The figures in the Hides and Skins Report are from the hides. I know there is a community amongst Hindus themselves who go by the name of 'Rishis' in our part of the country whose sole occupation in life is to take away the skin from dead cattle. They have got absolutely no objection even to flay the skin of slaughtered cattle. The figures given by Seth Govind Das include the numbers of both the dead and slaughtered cattle. Similarly the figures given by Pandit Bhargava are not the figures of cattle slaughtered during normal times. They were, as Honourable Members know, war years and, on account of the fact that the Japanese had invaded India through Assam, Assam alone had to accommodate about 5 lakhs of fighting men and an equal number of camp followers. Cattle from all parts of India were then taken to Assam to feed these ten lakhs of people from America and elsewhere, whites as well as blacks. Even the Chinese soldiers were there in Assam, not to speak of soldiers from every part of India. Therefore, those were abnormal years and you can not base your arguments on the figures of the years 1945 and 1946.

Pandit Thakur Dass Bhargava: But, during those years, there was a ban on the slaughter of cattle imposed by the Government of India. They had issued orders banning the slaughter of cattle. It is in spite of that that the figures of slaughter have been so high.

Syed Muhammad Saiadulla: I do not want to be side-tracked. The point is that there are cattle and cattle. We were trying to get cattle from West Punjab just before Partition. The cattle there on an average give half a maund of milk. The Assam Government have been trying to improve the milk yield of their cattle by introducing cattle from England, Australia and the Punjab. We have yet touched only the fringe of the problem with our Government cattle farms and we have succeeded only in Shillong. The milk yield there has increased but in the plains the milk yield is only quarter seer daily.

The motion of Pandit Bhargava is that, in order to improve the economic condition of the people, we should try scientific measures. That presupposes that the useless cattle should be done away with and better breeds introduced.

Now, I ask you what is to be done with these seventy lakhs of cattle that we have got in Assam? Therefore, Sir, if you place it on the economic front, you are met with this proposition that we have got such a big number of uneconomic cattle that must be done away with before you can supplant them with a better breed. Another point is.....

Pandit Thakur Dass Bhargava : Does not the honourable Member know that many useless cattle have been turned into good cattle by goshalas and other organisations and at least 90 per cent can be salvaged by proper feeding and treatment.

Syed Muhammad Saiadulla : Sir, I do not know of goshalas in other parts and I do not want to reply to Pandit Bhargava as I have only ten minutes to speak. I was telling the House that there is a lurking suspicion in the minds of many that it is the Muslim people who are responsible for this slaughter of cows. That is absolutely wrong.

Pandit Thakur Dass Bhargava : Quite wrong.

Syed Muhammad Saiadulla : I am glad that the Mover of this amendment says that it is quite wrong. There are lakhs of Muslims who do not eat cow's flesh. I am not speaking in any sense of braggadocio when I say that I myself do not take it. Before the partition the Muslims were only one-fourth of the total population. They did not raise sufficient cattle to kill. It is the majority people who sold their cattle to the Muslims to be killed. Now the Muslims form only one-tenth of the population of the Dominion of India. Do you think that the Mussalmans can raise sufficient cattle to slaughter them? Muslims are poorer than our Hindu brethren. The Muslims are as much agriculturists as the Hindus and the cattle in their farms form their capital asset, the natural source of their power to till the land and produce the food which will maintain them for the entire year. Therefore it is wrong to say that the Muslims kill the cows either to offend my Hindu friends or for any other purpose. Fortunately or unfortunately the Muslims are a meat-eating people. The price of mutton is so high that many poor people cannot buy it. Therefore on rare occasions they have to use the flesh of the cow. From my own knowledge, it is only the barren cows that go to the butcher. Speaking for Assam, it is the hill people who are the worst culprits in this respect. In the town of Shillong, there is only one Muslim butcher against seventy from the hill people, who deal in beef. Sir, in these circumstances, in the name of the economic front, I cannot lend my support to the motion moved by Pandit Bhargava. I am sorry that for the reasons given already, I am compelled to oppose the amendment of Seth Govind Das.

The Honourable Dr. B. R. Ambedkar : I accept the amendment of Pandit Thakur Dass Bhargava.

Mr. Vice-President : I shall now put the amendments one by one to the vote. The amendment of Pandit Thakur Dass Bhargava. That is No. 72 in List II.

Seth Govind Das : What about my amendment which has been moved as an amendment to Pandit Bhargava's amendment? That should be put to the vote first.

Mr. Vice-President : You moved your amendment as an amendment to No. 1002 which was not moved.

Pandit Thakur Dass Bhargava : I substituted No. 72 for No. 1002.

Seth Govind Das : My amendment is an amendment to the amendment which Pandit Bhargava just moved.

Mr. Vice-President : All right. I am willing to put your amendment to the vote. Now, the amendment of Seth Govind Das, *i.e.,* 73 in List No. II, is now put to the vote.

The question is:

"That in amendment No. 1002 of the List of Amendments, in article 38-A, the words 'and other useful cattle, specially milch cattle and of child bearing age, young stocks and draught cattle' be deleted and the following be added at the end:—

The word 'Cow' includes bulls, bullocks, young stock of genus cow.' "

The amendment was negatived.

Mr. Vice-President : Now amendment No. 72 in List II by Pandit Thakur Dass Bhargava is put to the vote.

The question is:

"That in amendment No. 1002 of the List of Amendments, for article 38-A, the following be substituted:—

'38-A. The State shall endeavour to organise agriculture and animal husbandry in modern and scientific lines and shall in particular take steps for preserving and improving the breeds of cattle and prohibit the slaughter of cow and other useful cattle specially milch and draught cattle and their young stocks.' "

The motion was adopted.

Mr. Vice-President : Article 38-A will consist of the amendment of Pandit Thakur Dass Bhargava. The question before the House is:

"That article 38-A in the form just mentioned form part of the Constitution."

The motion was adopted.

Article 38-A, as amended, was added to the Constitution.

Article 39

Mr. Vice-President : Shall we now go on to the next item in the agenda? No. 1003 has been covered by one of the previous amendments. No. 1004 has also been disposed of. Then No. 1005. The first part of it cannot be moved, but the second part can be moved. (Not moved.)

Then the motion before the House is that article 39 forms part of the Constitution. There are several amendments to this.

(Nos. 1006, 1007 and 1008 were not moved.) No. 1009 by Dr. Ambedkar and his collegues.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 39, after the words 'from spoliation' the word 'disfigurement' be inserted,

Prof. Shibban Lal Saksena : Mr. Vice-President, Sir, I beg to move:

"That in article 39, after the words 'from spoliation' the word 'disfigurement' be inserted, and all the words after the words 'may be' to the end of the article be deleted."

The Honourable Dr. B. R. Ambedkar : Why do you want to make a speech when I am going to accept it?

Prof. Shibban Lal Saksena : I am glad that Dr. Ambedkar is going to accept it. Because this article is to be a directive principle, it should not mention about laws of Parliament and so we must omit the words "to preserve and maintain according to law made by Parliament all such monuments or places or objects."

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment.

Mr. Vice-President : There is another amendment in the name of Shri Ram Sahai, which is identical in words. I shall put this to vote.

Shri Ram Sahai : *[Mr. Vice-President, Sir, there are two amendments in my name, and one of them is covered by the amendment just moved by Mr. Shibban Lal Saksena. As Mr. Saksena's amendment has been accepted by Dr. Ambedkar, I need not move mine. Now I move my other amendment that seeks to replace the words "It shall be the obligation of the State" in Article 39 by the words "The State shall". My object in moving the amendment is that the words "The State shall" should be in Article 39 just as they have been put in the preceding article and the words "It shall be the obligation of the State" should not be put in here. I have moved this amendment to bring all these Articles into conformity. I hope Dr. Ambedkar will accept it and so will the House.]

Mr. Vice President : I am now putting the amendments one by one.

The question is:

"That in article 39, after the words 'from spoliation' the word 'disfigurement' be inserted."

The motion was adopted.

Mr. Vice-President : There is the amendment of Prof. Shibban Lal Saksena.

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* [ ] Translation of Hindustani speech.

Begum Aizaz Rasul (United Provinces : Muslim): May I know if Dr. Ambedkar has accepted Prof. Shibban Lal Saksena's amendment? If not, I wish to oppose the second part.

Mr. Vice-President : There is no second part so far as I am aware. It only refers to deletion of certain words. The first part is the same.

Begum Aizaz Rasul : I wish to oppose that motion.

Mr. Vice-President : I am afraid it is too late now. The question is:

"That in article 39, after the words 'from spoliation', the word 'disfigurement' be inserted, and all the words after the words 'may be' to the end of the article be deleted."

The motion was adopted.

Mr. Vice-President : The question is:

"That in article 39, for the words 'It shall be the obligation of the State to', the words. 'The State shall' be substituted."

The motion was negatived.

Shri Ram Sahai : I want to point out that Dr. Ambedkar has accepted my amendment. I would request you kindly to again call for voting.

Mr. Vice-President : I put the matter before the House and the House has rejected it, and whatever the reasons might be, it is not for me to reopen the matter.

I will put that clause in the form in which it now stands before the House.

Shri Ram Sahai : *[My submission is, Sir, that Dr. Ambedkar has already accepted my amendment. I demand division on this question.]

Mr. Vice-President : It is too late now. Why don't you stand up in proper time and demand a division? The matter is now closed. The question is:

"That article 39, as amended, do stand part of the Constitution."

The motion was adopted.

Article 39, as amended, was added to the Constitution.

Article 39-A

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I move:

"That after article 39, the following new article be inserted:

'39-A. That State shall take steps to secure that, within a period of three years from the commencement of this Constitution, there is separation of the judiciary from the executive in the public services of the State.' "

I do not think it is necessary for me to make any very lengthy statement in support of the amendment which I have moved. It has been the desire of this country from long past that there should be separation of the judiciary from the executive and the demand has been continued right from the time when the Congress was founded. Unfortunately, the British Government did not give effect to the resolutions of the Congress demanding this particular principle being introduced into the administration of the country. We think that the time has come when this reform should be carried out. It is, of course, realised that there may be certain difficulties in the carrying out of this reform; consequently this amendment has taken into consideration two particular matters which may be found to be matters of difficulty. One is this: that we deliberately did not make it a matter of fundamental principle, because if we had made it a matter of fundamental principle it would have become absolutely obligatory instantaneously on the passing of the Constitution to bring about the separation of the judiciary and the executive. We have therefore deliberately put this matter in the chapter dealing with directive principles and there too we have provided that this reform shall be carried out within three years, so that there is no room left for what might be called procrastination in a matter of this kind. Sir, I move.

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, this is an after-thought of Dr. Ambedkar or, shall I say, of the rump of the

* [ ] Translation of Hindustani speech.

Drafting Committee. I do not know why they did not think of it at the time they drafted this particular Part of the Draft Constitution. Probably, he felt that in view of the fact that quite a number of new items have crept into this Part which might be called a veritable dust-bin of sentiment, he might also find a place in it for this particular amendment of his, I see no objection actually to this or any other amendment coming in because this dust-bin seems to be sufficiently resilient as to permit any individual of this House to ride his hobby-horse into it. But, I cannot understand Dr. Ambedkar's explanation when he said that he did not want to put this in the Fundamental Rights. He only wanted to make it permissive; but then he insists on a three-year limit within which this has to be carried out! As a matter of fact, when he himself realises it is not mandatory, what is the object of putting a three-year limit? The mere expression of the wishes of the framers of this Constitution that there should be separation of the judiciary from the executive is quite enough. It ought to be put into practice by the various Provincial Governments as early as possible. Where is the merit of the three-year limit in this particular matter? I personally would have favoured the amendment proposed by my friend Pandit Lakshmi Kanta Maitra, amendment No. 960.

The learned Doctor said that this has been practically one of the basic demands of the Congress ever since it was founded. I believe it is so; I do not want to deny it. I also remember that an eminent Congressman, who was Prime Minister of one of the major provinces in this country, once said that ideas about the separation of the judiciary from the executive have changed, and that because a foreign Government was no longer in power, separation need not be effected. This does not seem to be such a cardinal principle as politicians chose to believe it to be in the days when the British were in power.

The learned Doctor must have known that some provinces have already taken some steps in the matter of separating the judicial and executive functions. I think three major provinces have moved in the matter. Actually they have not made much progress, probably for various reasons, either other preoccupations or finance, or whatever it may be. I do not see why we should ask them to do this within three years when probably it could be done in six or seven years. What I really feel about this amendment is that there is no rhyme or reason in Dr. Ambedkar seeking to tie the hands of provincial Governments by saying that this should be done in three years, though actually, he cannot tie the hands of the provincial Governments by this directive as the provincial Governments can ignore this provision. We are merely voicing a pious wish and tying it up with a period within which we know that it may not be carried into effect.

In this connection, I would like to strike a note of warning. There are several amendments tabled in regard to this question of judiciary which are to be moved by the rump of the Drafting Committee, which are in the nature of an after-thought. For a Professor, it is all very good to envisage a complete separation of the judiciary and the executive. But in actual practice, it might work out in a different way altogether. It might also be that in trying to give the judiciary an enormous amount of power,—a judiciary which may not be controlled by any legislature in any manner except perhaps by the means of ultimate removal—we may perhaps be creating a Frankenstein which would nullify the intentions of the framers of this Constitution. I have in mind the difficulties that were experienced in another country where they have a rigid Constitution, the United States of America, not merely during the time of the New Deal of President Franklin Roosevelt, but also at the time of President. Theodore Roosevelt when the Progressive Party felt that the judiciary was interfering unduly with the liberalising of the administration. My feeling is that while I have the greatest respect for Dr. Ambedkar's views on this matter, to put the Constitution of the country in a straight jacket by giving undue power

[Shri T. T. Krishnamachari]

to the judiciary at a time when we know that in the matter of recruitment to the judiciary, we are not able to get A Class men at all, is unwise. I see instances of judicial officers, Judges of the High Courts becoming administrators, and coming back to the judiciary, because, I suppose, the Government is not able to find sufficient material from the Bar to fill vacancies in the judiciary. It seems in every province the type of people that come up to the top so far as judicial officers are concerned is not about the best that we could possibly get. In these circumstances, this trend of empowering the judiciary beyond all reason and making it a regular administration by itself, will perhaps lead to a greater danger than we can now contemplate. I do not know if at this stage I can appeal to the mover of this amendment to remove the three-year limit, which is superfluous and meaningless and which may not be carried into effect, and which would then be a matter of inducing the provincial Governments to flout the Constitution, and allow the view to be expressed as a mere sentiment as other Articles in this Part happen to be. I do not know if Dr. Ambedkar will ever be persuaded, particularly in view of the fact, I think, that the Congress party has approved of the Draft in this particular form; but I think there is no harm in pointing out the obvious difficulty in the wording of this particular amendment, which perhaps is otherwise quite unexceptionable.

Shri B. Das (Orissa: General): Mr. Vice-President, Sir, I suggest to the House to postpone consideration of this amendment of Dr. Ambedkar to a later date. The Congress is meeting very shortly at Jaipur. When the people were harassed by the former British Government, we thought we had no justice from the British Government and we wanted separation of the judiciary from the executive. That suspicion does not exist now. We have to examine whether separation today is necessary.

Unfortunately, I find India is lawyer-ridden. In this House, more than fifty per cent. of the members are lawyers. The Municipalities have more lawyers than are necessary. The Ministry has got a large number of lawyers: I am speaking of our own Government here. Though it is a pious wish of this House that in three years the judiciary must be separated from the executive, because it is not included in the Fundamental Rights, we have to consider, and I think this House will allow the Congress at Jaipur to consider, whether the huge expenses that would be incurred, the country can afford to bear.

There had been Pay Committees of Government of India and the Provinces who have not thought of lowering the salary level of the Executive or Judicial Officers. This House had accepted Village Panchayats. Dr. Ambedkar was generous to refer to the Congress principles. Is it practicable to-day? I support my friend Mr. Krishnamachari that it is not possible in three years. It will take ten or twenty years to give effect. Otherwise most of the provincial Governments will go bankrupt if they pay the salaries that the Judicial Officers are getting. Incidentally I will allude to one fact. I find even the Government of India recently increased the number of Federal Court Judges from three to five. We go on generously providing high judicial appointments and now we want to provide separate judiciary from the executive, provide more lawyers and munsifs and district judges to allow more lawyers to argue the case on both sides. Where will the poor man be! I would respectfully suggest to this House to allow this amendment to stand over and let us see what the Jaipur Congress thinks on the subject after one year of freedom. Remember the Congress has not met since we won our freedom or so-called freedom from the British. If we have won our independence, let us try to think it out in our era of independence.

Mr. Vice-President : The House stands adjourned till 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 25th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, 25th November, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—*contd.*

Article 39-A

Mr. Vice-President (Dr. H. C. Mookherjee): Notice of an amendment has been received from Dr. Ambedkar. Will you please move your amendment, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : (Bombay: General): Mr. Vice-President, I move:

That in article 39-A delete the words beginning from "secure" up to "separation of", and in their place substitute the word "separate".

So that the article 39-A, with this amendment would read as follows:

"The State shall take steps to separate the judiciary from the executive in the public services of the State."

The House will see that the object of this amendment is to eliminate the period of three years which has been stated in the original article as proposed by 39-A. The reasons why I have been obliged to make this amendment are these. There is a section of the House which feels that in these directive principles we ought not to introduce matters of details relating either to period or to procedure. These directive principles ought to enunciate principles and ought not to go into the details of the working out of the principles. That is one reason why I feel that the period of three years ought to be eliminated from article 39-A.

The second reason why I am forced to make this amendment is this. The expression "three years" has again brought about a sort of division of opinion amongst certain members of the House. Some say, if you have three years period, then no government is going to take any step until the third year has come into duration. You are practically permitting the provincial legislatures not to take any steps for three years by mentioning three years in this article. The other view is that three years may be too short. It may be that three years may be long enough so far as provinces are concerned, where the administrative machinery is well established and can be altered and amended so as to bring about the separation. But we have used the word "State" in the directive principles to cover not only the provincial governments but also the governments of the Indian States. It is contended that the administration in the Indian States for a long time may not be such as to bring about this desired result. Consequently the period of three years, so far as the Indian States are concerned, is too short. All these arguments have undoubtedly a certain amount of force which it is not possible to ignore. It is, therefore, thought that this article would serve the purpose which we all of us have in view, if the article merely contained a mandatory

[The Honourable Dr. B. R. Ambedkar]

provision, giving a direction to the State, both in provinces as well as in the Indian States, that this Constitution imposes, so to say, an obligation to separate the judiciary from the executive in the public services of the State, the intention being that where it is possible, it shall be done immediately without any delay, and where immediate operation of this principle is not possible, it shall, nonetheless, be accepted as an imperative obligation, the procrastination of which is not tolerated by the principles underlying this Constitution. I therefore submit that the amendment which I have moved meets all the points of view which are prevalent in this House, and I hope that this House will give its accord to this amendment.

Prof. Shibban Lal Saksena : (United Provinces: General): Sir, Dr. Ambedkar has already moved an amendment, that is he has added a new article No. 39-A. Is it permissible to a member to amend his own amendment?

Mr. Vice-President : Yes. I would request you all to bear in mind that we have to go to the fundamentals and not to technicalities.

Shri R. K. Sidhwa (C. P. and Berar: General): Mr. Vice-President, Sir, I am very glad that Dr. Ambedkar has moved this amendment and that at this late stage better counsels and sense have prevailed. In article 36 a similar time limit has been mentioned in connection with a very important matter—primary education. I objected to it, then saying that in the directive principles, no such time limit should be fixed. But my voice was one in the wilderness and the article was carried. But I am very glad at this late stage, better sense has prevailed and the time limit in this article has been sought to be removed.

Yesterday my friend Mr. Das stated that this question of separation of the executive and the judiciary has absolutely changed in view of the attainment of freedom. I was rather surprised to hear such an argument. If a principle, a basic principle was bad at the time of the British regime, I fail to understand how it can be good in free India. The basic principle is this, that the judiciary and the executive functions are combined. The District Magistrate is the prosecutor and he is also the administrator of justice. May I ask whether under these circumstances, can impartial justice be dispensed by the same person who prosecutes and also at the same time sits in judgment over that case?

As Dr. Ambedkar stated yesterday, ever since its inception the Congress has been stating that these two functions must be separated if you really want impartial justice to be done to the accused persons.

The arguments advanced yesterday were that in Free India the conditions have changed and that therefore it is not desirable that these two functions should be separated. The real secret, so far as I know, of those who advocate retaining the same position is that they want to retain their power. If the Honourable Ministers of the Provincial Governments feel that these two should not be separated, it is because they feel the power of appointments, which is in their patronage, would go away from them to the High Court Judges. I am very sorry if that is so. I am glad however that some of the Provinces have already started in this direction; but if any Provincial Governments feel that under the changed condition this change should not come, I will be very sorry for them because nothing has changed in the very fundamental principle after we had attained our freedom; on the contrary after the freedom or even during the partial freedom that we had, I would have preferred that our Congress Governments should really have taken an initiative in this matter. I am very glad to observe that some of the Provinces are going in that direction. The High Court Benches, even in the

British regime, have stated times without number that if you really want impartial justice done, these two departments must be separated.

While the time-limit has been removed, I expect, Sir, that after the passing of this Constitution or rather immediately I should say, I would desire these two functions should be separated. I therefore expect that while the time-limit has been removed, the Ministries in the Provinces will realize their duty and see that these two functions are separated in the interests of right and impartial justice.

With these words I commend the amendment that has been moved, for the acceptance of this House.

Mr. Vice-President : I shall now put this amendment to the vote.

Pandit Hirday Nath Kunzru (United Provinces: General): Sir, it is an important amendment and I hope you will allow the House to express its opinion on it.

Mr. Vice-President : Will you please come to the microphone then?

Pandit Hirday Nath Kunzru : Mr. Vice-President, the proposition that judicial functions should be separated from the executive was placed before the House yesterday by Dr. Ambedkar. I think that he gave the matter his very careful consideration before proposing that this separation should take place in three years.

Everyone knows the importance of this subject. The demand for the separation of the judicial from the executive functions so that the executive may have nothing to do with the administration of justice, is about fifty years old, and when Dr. Ambedkar brought forward his proposal I thought that the Government of India were desirous that this reform should be accomplished as speedily as possible.

I know, Sir, that this proposition would have been included in the Chapter relating to Directive Principles and would, therefore, not have been binding either on the Government of India or on any State and I wondered whether probably for that reason it was not included among the Directive Principles drafted by the Drafting Committee. But the matter having come before the House, and Dr. Ambedkar's proposition having been accepted, it is a matter of regret and deep regret to me that he should now seek to modify the proposition in such a way as to leave it to the discretion of the local Governments when the reform that we have all been insisting on for half a century should be carried out.

Dr. Ambedkar, while defending the deletion of the period, mentioned in his proposition, said that some people held the view that it might create the impression that nothing was to be done for three years. I wonder, Sir, whether he was satisfied with his own explanation. There is no one here so simple as to feel that the insertion of his proposal in the Draft Constitution would have made the Provincial Governments feel that they could rest comfortably for three years and that such action as they might choose to take might be taken only when this period was about to expire.

Had this proposition not been passed by the House yesterday the matter would have been quite simple. Frankly, I attach no value to any of the Principles included in the Chapter on Directive Principles, particularly as there is at the commencement of that Chapter an article saying that nothing in that Chapter can be judicially enforced. But the matter having been placed before, and accepted by, the House it is unfortunate that any change should be sought to be made in it. The impression that will be created now

[Pandit Hirday Nath Kunzru]

will be that the State is not serious in separating the judicial from the executive functions and that it means to take its own time in order to bring about the separation. Had this proposition not come before us, we could still have felt that this separation which is so important to the impartial administration of justice might be carried out within a reasonable period of time. But if the period of three years is now deleted and the matter is left entirely to the discretion of the authorities, the effect of this deletion will be very unfortunate. It is bound to create both in official and non-official circles the feeling that the reform is not considered to be of any great importance, that other reforms may easily be given precedence over it, and that it is merely an ideal to be kept in view by the authorities.

Therefore, I feel strongly that the House should not agree now to the amendment proposed by Dr. Ambedkar. Why should Dr. Ambedkar or any other person now try to bring about a change? Frankly, I see no obvious reason in favour of such a step. This proposal will be one of the directive principles included in the Draft Constitution. The period of three years will not therefore be binding on any authority. If it is feared that it might not be within the resources of any province to introduce this reform within three years, the fact that the provision would not have been mandatory would have enabled that province to take a little longer time in order to separate judicial from executive powers. It would not have compelled any province regardless of its financial or administrative position to carry out the proposal in three years. I see no reason therefore why a change should be made. On the contrary, I see every reason why it should not be made. It would be most unfortunate, it would be most undesirable, it would be an act of public disservice, to give the public and the authorities the impression that this vital reform may be postponed indefinitely. I therefore oppose the amendment now proposed by Dr. Ambedkar and I hope that it will be strenuously resisted by the House.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Mr. Vice-President, the Honourable Member who has just spoken referred to the Government of India in this connection. May I, on behalf of that Government, explain the position and express my regret at the fact that the Government of India as such, jointly certainly and largely even individually, is not intimately connected with the proceedings of this House as it ought to and should be? It should not be taken that any matter put forward here comes from the Government of India as such, although the Government is intensely interested in it naturally and would like to place their views before this House whenever it is possible. There are, if I may say so with all respect to this House, a number of matters which they have considered, on which the Government might have liked to place their views before this House, but owing to the stress of circumstances, owing to the fact that while this House is sitting matters of extreme moment are before the Government of India, whether in the domestic field or the international field, that many members of the Government are perhaps at the present moment more over-burdened with these problems and with work that even normally is so difficult, that it is their misfortune not to be able to give such time to these very important considerations of the Constitution as they ought to. I regret that on my own part, and I think the loss is entirely mine.

Coming to this present amendment, if I may again make some general observations with all respect to this House, it is this: that I have felt that the dignity of a Constitution is not perhaps maintained sufficiently if one goes into too great detail in that Constitution. A Constitution is something which should last a long time, which is built on a strong foundation, and which may of course be varied from time to time — it should not be rigid — nevertheless, one

should think of it as something which is going to last, which is not a transitory Constitution, a provisional Constitution, a something which you are going to change from day to day, a something which has provisions for the next year or the year after next and so on and so forth. It may be necessary to have certain transitory provisions. It will be necessary, because there is a chance to have some such provisions, but so far as the basic nature of the Constitution is concerned, it must deal with the fundamental aspects of the political, the social, the economic and other spheres, and not with the details which are matters for legislation. You will find that if you go into too great detail and mix up the really basic and fundamental things with the important but nevertheless secondary things, you bring the basic things to the level of the secondary things too. You lose them in a forest of detail. The great trees that you should like to plant and wait for them to grow and to be seen are hidden in a forest of detail and smaller trees. I have felt that we are spending a great deal of time on undoubtedly important matters, but nevertheless secondary matters —matters which are for legislation, not for a Constitution. However, that is a general observation.

Coming to this particular matter, the honourable Speaker, Pandit Kunzru, who has just spoken and opposed the amendment of Dr. Ambedkar seems to me, if I may say so with all respect to him, to have gone off the track completely, and to suspect a sinister motive on the part of Government about this business. Government as such is not concerned with this business, but it is true that some members of Government do feel rather strongly about it and would like this House fully to consider the particular view point that Dr. Ambedkar has placed before the House today. I may say straight off that so far as the Government is concerned, it is entirely in favour of the separation of judicial and executive functions (*Cheers*). I may further say that the sooner it is brought about the better (*Hear*, *hear*) and I am told that some of our Provincial Governments are actually taking steps to that end now. If anyone asked me, if anyone suggested the period of three years or some other period, my first reaction would have been that this period is too long. Why should we wait so long for this? It might be brought about, if not all over India, in a large part of India, much sooner than that. At the same time, it is obvious that India at the present moment, specially during the transitional period, is a very mixed country politically, judicially, economically and in many ways, and any fixed rule of thumb to be applied to every area may be disadvantageous and difficult in regard to certain areas. On the one hand, that rule will really prevent progress in one area, and on the other hand, it may upset the apple-cart in some other area. Therefore, a certain flexibility is desirable. Generally speaking. I would have said that in any such directive of policy, it may not be legal, but any directive of policy in a Constitution must have a powerful effect. In any such directive, there should not be any detail or time-limit etc. It is a directive of what the State wants, and your putting in any kind of time-limit therefore rather lowers it from that high status of a State policy and brings it down to the level of a legislative measure, which it is not in that sense. I would have preferred no time-limit to be there, but speaking more practically, any time-limit in this, as Dr. Ambedkar pointed out, is apt on the one hand to delay this very process in large parts of the country, probably the greater part of the country; on the other hand, in some parts where practically speaking it may be very difficult to bring about, it may produce enormous confusion. I think, therefore, that Dr. Ambedkar's amendment, far from lessening the significance or the importance of this highly desirable change that we wish to bring about, places it on a high level before the country. And I do not see myself how any Provincial or other Government can forget this Directive or delay it much. After all, whatever is going to be done in the future will largely depend upon the sentiment of the people and the future Assemblies and Parliaments that will

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meet. But so far as this Constitution is concerned, it gives a strong opinion in favour of this change and it gives it in a way so as to make it possible to bring it about in areas where it can be brought about—the provinces, etc.—and in case of difficulty in any particular State, etc., it does not bind them down. I submit, therefore, that this amendment of Dr. Ambedkar should be accepted. *(Cheers)*.

Dr. Bakshi Tek Chand (East Punjab: General): Mr. Vice-President, Sir, I rise to lend my whole hearted support to the amendment which has been moved by Dr. Ambedkar today. The question of the separation of executive and judicial functions is not only as old as the Congress itself, but indeed it is much older. It was in the year 1852 when public opinion in Bengal began to express itself in an organised form that the matter was first mooted. That was more than thirty years before the Congress came into existence. After the Mutiny, the movement gained momentum and in the early seventies, in Bengal, under the leadership of Kisto Das Pal and Ram Gopal Ghosh, who were the leaders of public opinion in those days, definite proposals with regard to the separation of judicial and executive functions were put forward. Subsequently, the late Man Mohan Ghosh took up this matter and he and Babu Surendranath Bannerji year in and year out raised this question in all public meetings.

When the Congress first met in the session in Bombay in 1885, this reform in the administration was put in the forefront of its programme. Later on, not only politicians of all schools of thought, but even retired officers who had actually spent their lives in the administration, took up the matter and lent their support to it. I very well remember the Lucknow Congress of 1899 when Romesh Chunder Dutt, who had just retired from the Indian Civil Service, presided. He devoted a large part of his presidential address to this subject and created a good deal of enthusiasm for it. Not only that: even retired High Court Judges and Englishmen like Sir Arthur Hobhouse and Sir Arthur Wilson, both of whom subsequently became members of the Judicial Committee of the Privy Council, lent their support to this and they jointly with many eminent Indians submitted a representation to the Secretary of State for India to give immediate effect to this reform.

In the year 1912, when the Public Service Commission was appointed, Mr. Abdur Rahim, who was a Judge of the Madras High Court and was for many years the President of the Central Legislature, appended a long Minute of Dissent and therein he devoted several pages to this question.

Therefore, Sir, the matter has been before the country for nearly a century and it is time that it is given effect to immediately. One of the Honourable Members who spoke yesterday, observed that this matter was of great importance when we had a foreign Government but now the position has changed, and it may not be necessary to give effect to it. Well, an effective reply to this has been given by the Honourable the Prime Minister today. He has expressly stated that it is the policy of the Government, and it is their intention to see that this reform is given immediate effect to.

Not only that, Sir, another objection was raised that on financial grounds it will not be feasible to separate the judiciary from the executive. Well, to this, again, an effective reply has come from the province of Bombay. Soon after the Congress Government assumed office in 1946 in Bombay, it appointed a Committee to look into this question. It was presided over by a Judge of the Bombay High Court and consisted of eleven other Members. It submitted its report on 11th October 1947. I have got a copy of that report in my hands. I do not think it is necessary to give detailed extracts from that report. This Committee has come to the unanimous conclusion that the separation of judicial and executive functions was a feasible and practical proposition. So far as the financial aspect was concerned, they examined the matter in great detail and

have estimated that the additional expense will be about ten lakhs of rupees a year. From this you will find that the proposition is such that it is not financially impracticable. It is feasible. The Honourable the Prime Minister of Bombay who happens to be here today tells me that his Government is going to implement the scheme at the earliest possible opportunity.

The Honourable Shri B. G. Kher : I confirm it.

Dr. Bakshi Tek Chand : I am glad to hear that he confirms it. This gives the quietus to these two objections which have been raised, that because of the changed circumstances, because we have attained freedom, it is no longer necessary and that the financial burden will be so heavy that it might crush provincial Governments. Both these objections are hollow.

One word more I have to say in this connection and that is, that with the advent of democracy and freedom, the necessity of this reform has become all the greater. Formerly it was only the district magistrate and a few members of the bureaucratic Government from whom interference with the judiciary was apprehended, but now, I am very sorry to say that even the Ministers in some provinces and members of political parties have begun to interfere with the free administration of justice. Those of you, who may be reading newspaper reports of judicial decisions lately, must have been struck with this type of interference which has been under review in the various High Courts lately. In one province we found that in a case pending in a Criminal Court, the Ministry sent for the record and passed an order directing the trying Magistrate to stay proceedings in the case. This was something absolutely unheard of. The matter eventually went up to the High Court and the learned Chief Justice and another Judge had to pass very strong remarks against such executive interference with the administration of justice.

In another province a case was being tried against a member of the Legislative Assembly and a directive went from the District Magistrate to the Magistrate trying the case not to proceed with it further and to release the man. The Magistrate who was a member of the Judicial Service and was officiating as a Magistrate had the strength to resist this demand. He had all those letters put on the record and eventually the matter went up to the High Court and the Chief Justice of the Calcutta High Court made very strong remarks about this matter.

Again in the Punjab, a case has recently occurred in which a Judge of the High Court, Mr. Justice Achu Ram, heard a *habeas corpus* petition and delivered a judgment of 164 pages at the conclusion of which he observed that the action taken by the District Magistrate and the Superintendent of Police against a member of the Congress Party was *mala fide* and was the result of a personal vendetta. These were his remarks.

In these circumstances, I submit that with the change of circumstances and with the advent of freedom and the introduction of democracy, it has become all the more necessary to bring about the separation of the judiciary from the executive at the earliest possible opportunity.

My honourable and respected friend, Pandit Kunzru, thinks that the deletion of the three years limit has got some sinister motive behind it. I myself was originally in favour of such a time limit being fixed, but for the reasons which have been so lucidly put before this House by the honourable Prime Minister, it is neither desirable nor necessary. A time limit of this kind may, in certain cases, defeat the very object in view. I have mentioned the case of Bombay where they are going ahead with the separation. I am told that the Madras Government had also appointed a similar Committee which has reported on the same lines as the Bombay Committee. Thus we have got two of our principal provincial governments taking action in this matter. In the Punjab, a scheme

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for separation of the judiciary from the executive was prepared many years ago by a Committee appointed by the Government of the united Punjab. I have no doubt that in the East Punjab also steps will be taken in this direction. At the same time we have to take the case of the newly formed administrations and Indian States who are merging or forming Unions amongst themselves and are States for purposes of this clause. Some of these newly set-up administrations may require a longer time limit than three years. Therefore, Sir, fixing a time limit would not be a proper thing.

For these reasons I support the amendment which has been moved by Dr. Ambedkar today.

Shri Lokanath Misra (Orissa : General) : Sir, we are all beholden to Honourable Pandit Nehru for his frank and straight advice on this matter, because as I see and as I have heard the proceedings of the House, for some days, everybody is trying to put in changes in the Constitution as if it is an election manifesto. Now, Sir, as a lawyer I know the difficulties of the lawyer, the difficulties of the litigants as also the difficulties of the law courts. My first point is this that we are perhaps going to put in this article in the Directive Principles for the better administration of justice, and to that end the article that we are going to put in would not serve any purpose because for better administration of justice, we want first of all just laws. Unfortunately due to our slavery, we have so many bad laws that, however justly they may be administered, they cannot give you justice. Therefore, we must have just laws. I am sure that in the new order we will frame our laws in such a manner that their administration would give us justice. Apart from that, it is said here that there must be separation of the judiciary from the executive. Perhaps we do not thereby mean that the judiciary should not be executive and the executive should not be judicious. I should rather say and it is my experience that when the executive works, it becomes injudicious and when the judiciary works, it becomes too dilatory. Therefore, while separation of the judiciary from the executive there must be, we must at the same time make people know and make the judicial officers and executive officers know that when an executive officer executes, he must do it judiciously and when a judicial officer or a judge executes, he must do it in time. I will give you one example. Sir, in my own province of Orissa, we recently passed a law called the Tenants Protection Act. We passed it in all good sense and we know that it will do people good, but although a year has passed, I have found that it has never been put into practice for the simple reason that the law of evidence is so defective, the law of enquiry is so defective and the judges are so half-hearted. Even though the Act has been passed, it has given no good. Therefore, the mere separation of the judiciary from the executive will not serve our purpose. We require something more.

Then again, Sir, I should say another thing which we require for the proper administration of justice. If we expect any good from the separation of the judiciary from the executive, we must be sure of one thing. The profession of law, being a private business, does not really help justice. It feeds on fat fees and forged facts. Lawyers may be as much officers of the Courts as the judges but they have no prestige unless they earn fat fees. Of course for this the lawyers may be to blame to some extent, but, Sir, the lawyers have to earn their living. They have to win their cases and to win their cases they have to formulate evidence and do all sorts of things, and unless they win one or two cases, they have no chance. Therefore I say that unless the professions of law and medicine become a State business, you

cannot have proper administration of justice either for rights or for health and disease. That means that just as government pleaders are engaged, attorneys are engaged, the profession of law should be paid and controlled by the State to the extent that they need only help justice and not have to promote perjury or forgery to win a case and please their clients. But now the fact remains that this side wins or that side loses, but in all sides truth and justice are lost.

Mr. Vice-President : Are you supporting or opposing the amendment?

Shri Lokanath Misra : I am supporting the amendment in principle. I was just going to say that it is simply a claptrap device. If we are whole-heartedly for the administration of better justice, mere separation of the judiciary from the executive would not do. Sir, I therefore beg to submit that if we are sincere in our desire for better administration of justice, not only should the judiciary be separated from the executive but the State should also see that law becomes so simple and so few and at the same time so intelligible to the masses that law is nothing far away and frightful and better administration of justice becomes a reality and does not remain a farce.

(Amendments Nos. 1010 to 1012 were not moved.)

Mr. Vice-President : We have had a reasonable amount of debate, and I would like to put the matter to vote.

Shri H. V. Kamath (C. P. & Berar : General) : It is a very important matter that is before the House.

Mr. Vice-President : I am afraid there are many more speakers. I would like to accommodate them, but it is now impossible. I am sorry. I shall put this amendment to vote.

Mr. Vice-President : The question is:—

That after article 39, the following new article be inserted:

"39-A. The State shall take steps to separate the judiciary from the executive in the public services of the State."

The motion was adopted.

Mr. Vice-President : The question is:

That article 39-A stand part of the Constitution.

The motion was adopted.

Article 39-A was added to the Constitution.

Mr. Mohd. Tahir (Bihar : Muslim) : Mr. Vice-President, Sir, I beg to move:

That after article 39, the following new article be inserted and the rest of the articles be renumbered:—

"40. It shall be the duty of the State to protect, safeguard and preserve the places of worship such as Gurdwaras, Churches, Temples, Mosques including the graveyards and burning ghats."

Today, we are framing the constitution of our great country and the eyes of every individual of our great country are fixed on this Assembly to see what we are doing and what we are granting for them. At this important and historical period, Sir, I have moved my amendment, a simple amendment by which I want that the State should be responsible for the protection, safeguard and preservation of religious places of worship for all communities of the Indian Nation. There was a time when this country was ruled by the Englishmen, by the foreigners through a constitution framed by them,—of course a constitution which was foreign to us. In that Constitution, of course, no such idea was incorporated, for the simple reason that the Britisher had the policy to play a game at the cost of the different communities of the Indian Nation. But, now we see that the country is ours, the State belongs to us and, of course, we have a right to claim the protection of our religious

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places of worship. Unfortunately, Sir, the Father of the Nation is not amongst us today; otherwise I can say without any fear of contradiction that I must have had his sacred consent for the acceptance of this amendment. Anyhow, I appeal to every individual member of the House and especially to every member of the Congress that they will give strong support for the acceptance of this amendment and I also appeal to the Honourable mover, Dr. Ambedkar, to give due consideration to it.

Sir, only yesterday, the House was bold enough to give effect to prohibition. The House was bold enough to give protection to the cows of our country and I hope that the House will be still bolder to give protection to the religious places of worship.

Sir, with these few words, I appeal again to every honourable Member of this House to give support to this simple and very light amendment.

Lastly, I would say that this amendment is the only amendment which would show one of the best qualities which can be found in this whole constitution for a secular state. With these few words, Sir, I move.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Mr. Vice-President, Sir, it is certainly the duty of the State to protect all places of public worship such as Gurdwaras, Churches, Temples, Mosques and also graveyards and burning ghats. The general law of the land—the penal law—has made ample provision for this. The Honourable mover of this amendment wants three things to be done and they are to protect, safeguard and preserve. So far as "to protect and safeguard" are concerned, it is the duty of the State to protect all places of public worship whether of property, whether belonging to an individual or a community. Particularly, places of public worship will be protected and safeguarded against all invasion, against all aggression and any molestation. That is one of the fundamental rights that is contained in the earlier part, Part III. Therefore, it need not be a directive here. But so far as the preservation of the places of public worship is concerned, there is the difficulty. We will assume that a temple is abandoned by the community which was erstwhile utilising that for public worship. Is it the duty of the State to preserve that, though it may have been a place of public worship? Article 39 provides that it shall be the obligation of the State to protect every monument or place or object of artistic or historic interest. These it will certainly preserve. 'Preserve' includes maintaining or keeping it in the same condition. If every temple and every gurdwara is to be maintained, which may be abandoned by a community, then it will be imposing an unnecessary obligation on the State and diverting the tax-payers' money to purposes which are not legitimate charges upon it. On the other hand, it is the duty of the community to maintain and preserve every gurdwara and temple. All that can be expected of the State is that it should see that there is no molestation, it should protect them against all aggression. That is all that can be expected and for that there is ample provision in the Fundamental Rights and also in the general Criminal Law. On the whole, I am sorry to oppose this amendment, however much I might like that all these places of worship to whichever community they might belong must be protected. They must be safeguarded. I am equally one with him that places of God ought not to be molested. There is ample provision already. Therefore, this amendment need not be accepted.

The Honourable Dr. B. R. Ambedkar: Sir, I do not accept the amendment.

Mr. Vice-President : I will now put the amendment to vote.

The amendment was negatived.

Article 40

Mr. Vice-President : The motion before the House is:

That article 40 form part of the Constitution.

There are a number of amendments which I shall read one after the other.

(Amendments Nos. 1016 and 1017 were not moved.)

Mr. Vice-President : No. 1018. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I understand Mr. Kamath is moving an amendment.

Shri H. V. Kamath : I shall be moving my amendment after Dr. Ambedkar has moved his.

The Honourable Dr. B. R. Ambedkar : Sir, I move: "that for the existing article 40, the following be substituted:—

"40. The State shall —

(a) promote international peace and security;

(b) seek to maintain just and honourable relations between nations; and

(c) endeavour to sustain respect for international law and treaty obligations in the dealings of organised people with one another."

Sir, this amendment merely simplifies the original article 40 and divides it into certain parts separating each idea from the other so that any one who reads the article will get a clear and complete idea of what is exactly intended to be covered by article 40. The propositions contained in this new article are so simple that it seems to be super-arrogation to try to explain them to the House by any lengthy speech.

Sir, I move.

Mr. Vice-President : There are certain amendments to this which I am calling out. No. 74 Mr. Sarwate.

Shri V. S. Sarwate (United States of Gwalior-Indore-Malwa-Madhya Bharat): Mr. Vice-President, Sir, I beg to move an amendment to this amendment. My amendment stands thus:

"That in amendment No. 1018 of the list of amendments, in article 40, after the words "The State shall—" and before sub-clause (a), this new clause be inserted and the existing clause be renumbered accordingly:—

(a) foster truthfulness, justice, and sense of duty in the citizens;"

Sir, the House may note that this amendment seeks to embody the characteristics of the Gandhian ideology. Mahatmaji led our struggle for independence with these characteristics and won it. The House may further note that the amendment begins with truthfulness. I need hardly point out that in Mahatmaji's view, truth was God and if I may be permitted to say so, I think he attached more importance to truth than to non-violence. There may be exceptions to non-violence; there is none to truth. Those who do not believe even in God certainly do believe in truth. Society is based on truth. Therefore, he styled his autobiography not as Experiments after non-violence, but as Experiments after truth. Therefore, I commend to this House this amendment which embodies these characteristics.

I would anticipate certain objections that may be raised to this. The first objection may be that this is too general and too vague to have any practical effect. I would submit that if this be the objection, I stand in honourable company, because, the rest of the clauses probably may be subject to the same objection. I may further point out that if need be, concrete steps which

[Shri V. S. Sarwate]

could be taken to bring into effect this amendment can be suggested. But, that is not necessary. I believe after all the principles given in this Chapter are of such a nature that they are fundamental, that they are basic, and that efforts to implement them to the fullest extent would have to be taken as long as society goes on. That is exactly the description which may be applied to this amendment also. I would say only a few more words, Sir, I would submit that in the whole of the Constitution as it stands, one would be painfully surprised that there is absolutely nothing which shows one way or the other and which sheds light on the Fundamental principles of the Gandhian philosophy.

Another objection that may be taken possibly is this: this need not be said because such moral principles are not laid down in a Constitution. I would very respectfully submit that it is not at present the model which is followed in Constitutions. For instance, in the Constitution of the U.S.S.R., in the first Chapter which gives the political foundations and economic foundations, they have given the famous sentence of Marx: "To those who shall need, sufficient shall be given; to this every man must work according to his ability; every man must get according to his needs."

They have given in this draft Constitution the Fundamental ideas which move you to the adoption of the Constitution and accordingly, I would commend this to the good sense of the House. I am sure that my honourable Friends and colleagues and others, those who have followed Mahatma Gandhi in this struggle, would like to have in this Constitution something which he had given to us, and which he has left for us ever to remember and follow.

Shri H. V. Kamath : Mr. Vice-President, Sir, at the outset, may I say that a single amendment which I had given notice of has been split up into three different amendments, numbers 82, 83 and 84. I am not saying this as a carping critic; but I find that it would have been better if this had appeared as a single amendment as I had sent it. I know our office is heavily overworked and I appreciate that they are doing very well in the face of the heavy odds which they are contending with. I shall read it as one amendment by your leave. It will read thus.

Mr. Vice-President : I understand that they have been broken into three amendments because you seek to make alterations in three different places—not continuously. That is a technical explanation for a technical objection.

Shri H. V. Kamath : If the three amendments are taken separately and not together, they will have no meaning. Anyway that is a minor objection. I do not want to press it. With your permission, Sir, I would like to read it as one amendment. Sir I move—

"That in amendment No. 1018 of the List of Amendments in article 40, after the word 'shall' the words 'endeavour to' be inserted, in clause (b) the words 'seek to' be deleted; deleted; in clause (c) the words 'endeavour to' 'be deleted' ".

So that if this amendment be accepted by the House the amendment of the Drafting Committee will read as follows:—

"The State shall endeavour to (a) promote international peace and security; (b) maintain just and honourable relations between nations; and (c) sustain respect for international law and treaty obligations in the dealings of organised people with one another."

This amendment seeks only a slight structural change in the amendment brought forward by Dr. Ambedkar so as to bring out or indicate the directive character of the principle embodied in article 40. It is recognised and it has been always India's endeavour to promote international peace and security and to enhance respect for international law and treaty obligations. I think, Sir, and I am sure the House will agree with me when I say that

India with her ancient cultural and spiritual heritage and her tradition—centuries old tradition of non-aggression—is best qualified to enhance respect for international law and treaty obligations. It is common knowledge that within the last thirty years regard for international law and treaties had sunk to a low level and treaties are regarded as mere scraps of paper. I hope that in the new world in which we are living today and in which we are playing and are going to play a vital part, we will be able to bring about a vital change in international relations, so that at an early date we will have really one world Government or one Super-State to which the various nation-States of the world will have surrendered part of their sovereignty and to which all these nation-States will owe willing allegiance and will accept the Sovereignty of this Super-State. I do not wish to add anything more but I will only content myself with saying that in these days there is a tendency to regard international relations as not of paramount importance, but that tendency ought to be curbed, and we ought to give more attention to international affairs so that the world can really become one free world.

My friend Mr. Sarwate's amendment does not deal with the subject contained in article 40. Mr. Sarwate will see that article 40 deals with international relations and the amendment that he has moved is something which deals with the qualities of citizens in India. I do not think that is really relevant to the article under consideration and I think it cannot find a place here. Sir I move my amendments Nos. 82, 83 and 84 as one amendment to Dr. Ambedkar's amendment No. 1018.

Mr. Vice-President : Prof. Shibban Lal Saksena. Yours is the same as Mr. Kamath's.

Prof. Shibban Lal Saksena : Sir, I do not move:

Mr. Vice-President : Amendment No. 1019—Mr. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move—"That for article 40, the following be substituted:—

"40. The Federal Republican Secular State in India shall be pledged to maintain international peace and security and shall to that end adopt every means to promote amicable relations among nations. In particular the State in India shall endeavour to secure the fullest respect for international law and agreement between States and to maintain justice, respect for treaty rights and obligations in regard to dealings of organised peoples amongst themselves."

Sir, in commending this motion to the House I would begin by recognising at once that, as far as the surface goes, there seems to be not much difference in the ideals sought to be attained by my amendment and those in the wording of article 40 as it stands. The difference may appear to be the difference of wording only. I submit, however, that though the difference seems to be a difference, superficially judging, of wording only, to me at any rate the difference in wording seems to conceal a difference of approach, a difference of out-look, perhaps also a difference of intention. I would urge, Sir, that we should leave no room for doubt about this matter. I will point out for instance that the original clause as it stands requires—

"That 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 respect for treaty obligations in the dealings of organised people with one another".

Now I have emphasised in this connection that by such articles in our Constitution, we want to convey, not merely some vague promise or endeavour to promote, or even an obligation to promote international peace and security etc. I want, first and foremost, the State in India to be pledged to promote international peace and security.

[Prof. K. T. Shah]

The recent wrangles that we have seen in the International Security Council of the U.N.O. in regard for instance, to disarmament, the entire history in fact for the last twenty years or so of the problem of disarmament, would go far to convince any impartial observer that the powerful nations of the world do not really intend to disarm. They do not desire peace and security for peoples, but only for their friends and associates, and of course, for themselves. Now so long as you continue to indulge in a race between yourselves as to who shall disarm first, it is unlikely that you would be finding any great progress in an all-round disarmament, as the first step to securing international peace. I would submit that somebody will have to make a beginning and such a beginning cannot be made unless an open, frank declaration of policy, pledging a nation unreservedly to peace, to the maintenance of international law and friendship is given. Unless that is given, it would be impossible to make a real beginning in the task of all-round disarmament and securing and maintenance of peace.

We are, I admit, living today in a heavy atmosphere of all-round distrust and suspicion. And in that atmosphere, it is impossible to find people in any country willing to expose their own national security and independence, by taking the first step towards real disarmament. For us, however, in this country, I venture to submit to this House, there have been the teachings and the example of our great leader who made Non-violence, most clearly and unmistakably the rule of conduct, not only for individuals but also for nations. That non-violence was not, as I am afraid some people have been inclined to believe, a mere matter of, shall I say, political chicanery or practical expediency. It was a matter of religious belief, at least with him who preached it. It, therefore behoves us who claim to be following in this footsteps, and who claim to uphold his teachings, that this State at least, of which he has been proclaimed the father, should be pledged from the outset to the maintenance of peace.

May I, in this connection recall to this House the very categoric declaration which Mahatma Gandhi made at the time of the Round Table Conference which he attended. He said that if he got Swaraj, if the Congress was master in this country, one of the first things he would advise it to do would be to disband the army and the police, and anything else which savoured of violence in the organization of the Indian State. I do not know whether you would be prepared at this time, and living under the circumstances in which we are living, to carry out literally such a desire as that. But I know this, that unless we make a beginning, and pledge ourselves to the maintenance of peace, and to ensure security to all countries, we shall be making these professions sound too hollow to be believed. We would then indeed be in the good company of people who make loud professions for the maintenance of peace, but at the same time go on arming themselves to the teeth, making up piles of atomic bombs and threatening each other at every crisis, which is of their own creation, so that peace seems to be as distant as ever and certainly not as permanently established as one would desire it to be.

There are other circumstances, Sir, which also incline me to place this categoric declaration before the House, and desire that it be incorporated in our basic Constitution. The possibility merely of promoting peace and respect for international law in the world today may involve us in those combinations of nations which are taking place whereby rival imperialisms seems to be arrayed against each other. These combinations involve each part, each associate and each ally in their own designs for which we may have no taste. It has, in the past history, been our common complaint, that we have been dragged against our will, without our consent, into the imperialistic, aggressive wars of Britain. Now, when we are free, now when we may claim to

shape our own foreign policy, and determine our relations with other people ourselves, would it not be as well for us to declare that we at least from the start, shall pledge ourselves to peace that we as a people will take an oath whereby for no reason shall we resort to arms, to settle our differences with other countries, and with other peoples. If we are prepared to do so, then I do not see why we may not accept the amendment I am placing before the House.

Sir, reasons less idealistic than those I have so far referred to also indicate a course which I have now proposed. We are not only comparatively very poor in the matter of armaments, we are not only backward in all the material equipments that ensure some success in modern warfare, but we have not, I venture to think, that industrial background, that background of very highly developed modern mechanical or chemical industry or the scientific technique which alone is an assurance for securing adequate armament from our own resources, and so a chance for victory in the end, and for making an effective contribution for the maintenance of peace, at least for those, at any rate who believe in securing peace by piling up armaments.

We have been, I see, buying second-hand materials, like the cruiser that was ready for the scrap heap which we are supposed to have bought recently, or planes or other arms. Very often these weapons and vehicles are nothing more than what is designed for the scrap heap by their original owners, and these are unloaded upon us, and I do not know at what price. In any case, what I mean to say is that we are completely dependent, for our initial supplies of such material, upon outside producers.

And Sir, the mischief of this state of affairs does not end there. Modern armaments are so highly specialised, parts of these weapons and vehicles and instruments are so extremely standardised and inter-changeable, that once you begin to get your supplies of materials for warfare from a particular source, we shall be bound for ever to that particular source. If you change, the armament material already acquired will prove futile and useless.

Under these circumstances, for us to get involved in any particular combination, which compels us to model our armies, navies and air-forces upon the organizations and equipments of other places, and by keeping pace with them, so to say, in the race for armaments and ever more armament, would to my mind, be to spell disaster, and continued dependence in a most vital particular upon others which we should do our best to avoid.

The one thing that seems to me to be the best guarantee for avoiding any complications of this kind is here and now, to take a vow, so to say, pledge ourselves, as a people against any form of warfare, and for ever stand to maintain and uphold peace and international security for all countries of the world including our own. This, Sir, is not a matter of verbal profession only. I hope nobody would think that this implies mental reservation which, I for one, would utterly denounce. This is an expression as much of an idealism that has governed our actions and policies so far, as also of material consideration which I for one cannot omit placing before the House in commending this motion to it.

(Amendments No. 1020 to 1024 were not moved.)

Mr. Vice-President : Amendment No. 1025 in the joint names of Shri Damodar Swarup Seth and Shri Mohanlal Gautam.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move:

That in article 40, the following words be added at the end:

"It shall also promote political and economic emancipation and cultural advancement of the oppressed and backward peoples, and the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world."

[Shri Damodar Swarup Seth]

Sir, article 40 so far as it goes appears to be appropriate and good, but unfortunately it does not go far enough. While it rightly lays stress on promotion of international peace and security, it sadly ignores some of the basic causes which generally lead to conflagration and consequent devastation and destruction of the world. In this article nothing has been said about political and economic emancipation of the oppressed and backward people, nor has anything been said about the ensuring of minimum of social rights to the entire working class of the world through international regulation of their legal status.

It is clear that as we see, unless the basic causes of breach of peace and security are removed, it will not be possible to maintain peace, national or international, by simply arriving at an understanding between nations and nations. The continuance of the oppressed and backward people in this world has generally been a great menace to world peace. It offers temptation and encouragement to the exploiter and the blood-sucker in his nefarious job of exploitation and blood-sucking. It extends the hands of capitalism and nourishes imperialism and colonialism, paving the way for regional and international warfare.

So far as the working class is concerned, we see that it has not yet been able to secure even the universal minimum of their social rights. The workers of the world even today are the salt of the earth; it is they who produce wealth, it is they who make the world worth living in, but we see that they are nowhere living in a comfortable position. We see everywhere in this world that millions and millions of them are being changed into beggars without any homes or hearths. It is a point worth consideration that, when the workers who produce all the wealth of the world are not in a position to maintain themselves, it is difficult to consider who else will be able to live. I ask in all humility, when the salt has lost its savour wherewith is it to be salted? When the workers of the world die, who else will live in this world? India was till the other day an oppressed nation and I wonder if even today it is counted amongst the progressive people. It is therefore essential that now when we are making the Constitution of free India we, both in national and international interests, lay true emphasis on political and economic emancipation of the oppressed and backward classes and on ensuring the universal minimum to the entire working class of the world through international regulation of their legal status the lack of which so long has been causing breaches of peace and security. Unless that is done, Sir, I am afraid any efforts to promote peace and security will not be possible. I therefore hope that my amendment which is apparently very innocent and harmless will be accepted by this House ungrudgingly.

Prof. B. H. Khardekar (Kolhapur): Mr. Vice-President, Sir, I am here to support the amendment moved by Dr. Ambedkar, and to say a few words in general on article 40. I have promised you, Sir, to be very brief and I may say I cannot help being relevant.

In supporting the article, I wish to say a few words about two or three things: The position of international law today in the light of recent history; the relations between the different nations, and the role or the part—the very great part—that our country has to play in regard to the different nations.

Mr. Austin, a great jurist, says that there is no such thing as international law at all —if there is anything it is only positive morality. Very briefly he gives three reasons: that there is no legislature, no judiciary, no executive. In saying that there may be positive morality I think even there he is wrong. If there were to be morality amongst nations, well, we would not have all that has been going about. If there is a morality amongst nations today it is the morality of robbers. If there is any law today it is the law of the jungle where

might is right. That is why I think the part that India has to play and has played, is covered by Dr. Ambedkar's amendment which has not only verbal elegance to recommend it but also the intention that the country should take to certain actions if necessary. The part that India is to play is certainly very important because foundations of international morality have to be laid and only a country like India with its spiritual heritage can do it.

In support of Austin we find jurists like Gray. On the other hand, there are some international jurists like Hall, Westlake, Oppenheim and others who, because of their excessive zeal and anxiety to give international law a name and a shape, argue almost feverishly—somewhat childishly, if they are to be summarised—that is what they appear. Their contention is that it is very necessary to have international law and therefore we have international law. I might make it appear stupid by saying, "I think it is necessary for me to have a thousand pounds in my pocket; and if I think that I have a thousand pounds in my pocket, my place would be in the lunatic asylum". Their wishes are father to their thought, and if wishes were horses beggars would ride; if there were to be an international law, peace would prevail. But that is unfortunately not the position. Mr. Brown, Jennings and others sit on the fence and take the middle course. They say that international law is neither a panacea nor a chimera. It is a thing in the process—it is growing, it is becoming. I subscribe to a certain extent to this view that if nations, and particularly if India were to lead the way, we may have some sort of international law in spite of all the chaos that we see today. Some efforts made so far I may refer to, within a couple of minutes (that I have got), in giving certain substance to the theories of the international jurists. The League of Nations, as you know, was an inglorious failure, unfortunately. Why? Because it was more or less a league of robbers. I met a friend of mine, who explained to me the reasons why the League of Nations failed so ingloriously. His father had told him: The headquarters of the League were situated in Switzerland at Geneva; salubrious climate, majestic Alps, sumptuous Swiss food, appetising women, exotic music and the hall for debate was something that gave sufficient exercise to the vocal organs—and the League came to nothing. It could not come to anything, because it was an institution meant to perpetuate a wrong that was perpetrated by the Treaty of Versailles. After the League, its successor is the United Nations. This also seems to be a weak, pusillanimous and impotent agency. But our Prime Minister has done a very wise, very diplomatic and morally also a very sound thing by lending his support to this weak agency. An agency which is meant for good things must be strengthened and I think the Article that we have in the directive is meant to be directed towards that particular end. India, as I said, has a spiritual heritage. The mission of India is the mission of peace. Right from Ram Tirth and Vivekananda down to Tagore and Gandhiji, we have been carrying on this mission of peace. Non-violence is in the soil and in the heart of every Indian. It is not something new. Gandhiji, if he has done anything, has very much strengthened it. Throughout history it is not because we have been weak but because it has been in our blood that we have always been peaceful, never aggressive. Therefore, it is in keeping with our history, with our tradition, with our culture, that we are a nation of peace and we are going to see that peace prevails in the world.

Now, Sir, I have some doubts about certain parts of the article that we are to be friends of all. But common sense and experience teach us that those who are friends of all sometimes have no friend at all. Therefore, when we want ends and means to be pure, we should make our policy somewhat clear. To Russia, we may and should say: "we accept and we appreciate your aims and ideals, but your means are rather crude, sometimes they are very doubtful." To England and to America, we must say "we have very many misgivings about your aims and ideals. Your means are very very polished, very very civilised".

[Prof. B. H. Khardekar]

So we should show a certain indication in our foreign policy and when we have men like Pandit Nehru at the helm or foreign affairs and when the foundations of peace and non-violence have been laid down by the Father of the Nation, this country need not despair of its future; it can even hold out a future to the whole of the world.

Shri Biswanath Das (Orissa : General): Sir, I stand to support the motion of the Honourable Dr. Ambedkar which has given a clear lead to the country. The Amendment which is to come as article 40 reiterates our policy and position regarding India's international relations. While the contribution of the West to international relations and promotion of international security was first the Hague Conference and secondly the League of Nations and now, thirdly, the United Nations Organisation, India even when she was in letters and bondage, had her mighty contribution, not in the shape of influence of prowess or wealth, but by bringing her thought into the field of international concept,—the mighty, intellectual and moral influence of a Tagore and a Gandhi who taught nothing short of international amity, honourable and open relations between nations and countries. This is a mightly contribution to the betterment of international relations in a world that is out for cut-throat competition in armament; and soon after, is bound to come into the field keen economic rivalry. This being the position today, it is difficult for India to decide what her international relations are going to be and what part she is going to play in the world. The motion of my Honourable friend Dr. Ambedkar not only lays down what we ought to do and what we have to do, but also states the limitations within which India is to play her role in international transactions with other nations. The role is honest; the role is upright; the role is open. India, under the leadership of Mahatma Gandhi, our great leader, has learnt to take to such open course of action. There is nothing hidden in our ways. There is nothing secret in our ways. That explains the difference between the course of action adopted by other States from those adopted by India.

Coming to our relations either present or future with the United Nations Organisation, we see that that Organisation is divided into blocs. We have stated in the clearest terms that we belong to no bloc, despite the fact that we are a young nation, a new born free state, with feeble power though our resources are mighty and have yet to be developed. In this strife between two big blocs, ours is a difficult and unenviable position. We have not to be in *blocs* and we have to fend for ourselves for our own defence and for our own security. Though our respected leader, the honourable Pandit Jawaharlal Nehru, has told us that he found no theocracy or no communal tendency in the near and Middle East States, we have the latest announcements in the Press that the very slogan of "Islam in danger" is bringing most of the Muslim Arab countries together against us. That is one difficulty. Our neighbour, the Pakistan State, always considers us unfortunately as enemy No. 1 despite the fact that we agreed to bring Pakistan into existence so as to bring about peace and amity between us, the two states. She regards us however like an enemy and raises the cry 'Islam in danger' which brings Muslim countries together.

Secondly, Sir, despite the unanimity of purpose disclosed by the united action of representatives from Pakistan and India, the fact remains that the Muslim countries gave the go-by to India when the South-West African question was discussed by the U. N. O. This leads us to the belief that they are made to play the game of the Britisher, the unseen hand of Britain and the unseen hands of South Africa and Britain together. These explain our difficulty and helplessness in the international sphere. I have already stated that our leaders have emphatically announced that we do not belong to any bloc. We are not helped by any bloc and attempts are even being made by the different blocs not to do anything which helps India on her way to progress. That being the

position I find little reason for my friend Seth Damodar Swarup coming forward with an amendment calling upon the Constituent Assembly to accept a position which is least fair to the best interests of the country. Sir, we are called upon to free the politically and economically exploited people of the world. Where is the necessary force to back this great programme of freeing the politically and economically exploited races of the world today in India? It might be that after some time India will be their beacon light and focus attention on the exploited countries of the world. That is our hope. But Heaven knows how long it will take for us to be able to do it. It is in the hands of God. I would therefore beg of Mr. Damodar Swarup and appeal to him to withdraw his amendment which expresses the point of view of the Socialists. I support the amendment moved by Dr. Ambedkar which clearly and fully brings out the aspirations of India. I fully support it.

Shri B. M. Gupte (Bombay : General): Sir, I rise to support the amendment moved by Dr. Ambedkar. It is really a matter for sincere gratification that the cardinal principle of our foreign policy that has been laid down in this article as proposed is the promotion of peace, international peace and security. There is no doubt it is a very desirable thing. All the world over, in the deep recesses of the human heart there is a passionate longing for peace and Mahatma Gandhi was the embodiment of this yearning for peace. After the devastation caused by two world wars, the world is again threatened with a third war and the world is anxious to avoid that catastrophe. Personally it would have given me greater satisfaction if, instead of merely laying down our objective as the promotion of peace, we could have devised and emphasised some method for the promotion of peace. I think Mahatma Gandhi has suggested one method. He laid down the principle of arbitration for the settlement of labour disputes. That principle could be very well extended to other departments of life and also to international disputes. I think it would have been better if we had provided that arbitration should be resorted to if we want to avoid war. We should hold out some substitute for war. Naturally there cannot be a better substitute than arbitration. Therefore I would have been very much gratified if we had laid down here that our international policy would be to encourage the settlement of disputes through arbitration. I do not want to move any amendment to that effect myself, but I certainly would like to stress that and I shall be very glad if this suggestion is acceptable to the Mover and he himself volunteers to bring forward such an amendment. With this suggestion, I support the amendment moved by Dr. Ambedkar.

Shri M. Ananthasayanam Ayyangar : Mr. Vice-President, though it comes as the last article, article 40, in this Part, I consider it as one of the most important articles. When a storm is raging we cannot escape it by keeping aloof. If we want to have peace and progress in this country it is absolutely necessary that the nations around us also maintain peace and are in the march of progress economically and socially. Therefore we must lay emphasis on this article which seeks to insist upon our taking part in the settlement of international disputes by arbitration and by peaceful means. I am not satisfied that this article is sufficient for this reason that even in the Charter of the Nations on which the U.N.O. is based, one or two articles are missing. That was the reason why the League of Nations failed. The Nations of the world have not come to an agreement that all people should be set at liberty, small and big alike, and that all nations or races occupying particular territories ought to be set free to manage their own affairs. This sentiment did not find a place in article 10 of the League of Nations. Neither does it find a place in the Charter of the United Nations today. Until this is done, I do not think there will be any real peace in the world. Even today the coloured people in Africa and other parts of the world are not assured that they will be set free. Mandates are imposed upon them and they never end. Mandates are

[Shri M. Ananthasayanam Ayyangar]

merely transferred from one hand to another hand and these people are kept under perpetual domination. The territorial integrity of the various countries are protected by collective security. That means that Holland will be allowed to continue here stranglehold on Indonesia and France will be allowed to keep its possessions in Asia and Africa. Whether we suggest resort to arbitration for the settlement of disputes or some other peaceful method, these things will continue. The last war broke out because England was an Imperialist power and even chhota Belgium was an Imperialist power and this encouraged nations like Germany and Japan to attempt to become imperialist powers too.

I would like very much that we should have some such clause that it shall be the duty and the constant endeavour of the Government of India to see that all people in the world are released from the domination of other people, that each people big or small, each nation or race big or small, get freedom to manage their own affairs within the territory which God has given them. Situated as we are, we cannot do it. For this purpose, arbitration is the sole means of settling international disputes. This also finds a place in the United Nations Charter. I would like, Sir, with your permission to add a clause, clause (d), to the amendment moved by my honourable friend, Dr. Ambedkar. If it is agreeable to the House and if you accept it, the clause will be—

"and (d) to encourage the settlement of international disputes by arbitration."

This is the clause (d) of Mr. Gupte's amendment but he did not move it. The other items in the amendments moved by Dr. Ambedkar would not be really effective unless you suggest the means by which they could be given effect to. International relations can be peaceful, International agreements—trade and other agreements—can be enforced only by arbitration and not by resort to arms. Therefore, Sir, if the House accepts and if the honourable Dr. Ambedkar finds it convenient to accept it, I would suggest that the following be added as sub-clause (d) to his amendment:

"and (d) to encourage the settlement of international disputes by arbitration."

Mr. Vice-President : Does the House give leave to Mr. Ayyangar to make that addition to the amended clause of Dr. Ambedkar?

Honourable Members : Yes.

Mr. Vice-President : Mr. Ayyangar, will you move it formally?

Shri M. Ananthasayanam Ayyangar : Sir, I move that in the amendment of Dr. Ambedkar, at the end add the following sub-clause:—

"and (d) to encourage the settlement of international disputes by arbitrations."

Shri Mahavir Tyagi (United Provinces : General): Sir, I am opposed to this.

Mr. Vice-President : If you want to discuss the amendment moved by Mr. Ayyangar, Mr. Tyagi, you are perfectly entitled to speak.

Shri Mahavir Tyagi : Sir, the article as sought to be amended by Dr. Ambedkar is a mere pious wish. It does not add any substance to the Constitution. It may be all right when delegates go to foreign countries, mix and familiarise themselves with the delegates from other countries. But when I see the phrases used here. I wonder whether you are really thinking of war against any nation, because whenever I saw any nation speaking in these terms, they were always immediately followed by their guns and aeroplanes. This phraseology has been misused by other nations. I have my suspicions. We cannot question our own motives. You talk of arbitration of international disputes. But where are the arbitrators? We have seen the arbitrators who came here and have seen the way they have been functioning. It is very difficult to get honest arbitrators. How can anybody arbitrate in such matters?

Sir, I prefer war in such cases. War is also a philosophy, it is both a curse and a blessing. If these are our objectives, if we want to maintain peace and seek to maintain just and honourable relations between nations, then I say it is not possible if we remain weak and remain merely a meadow of green grass for bulls to come and graze freely. For the purposes mentioned in this clause what we want is armament, both of will and weapons, moral armament as well as physical armament. We should see to it that our nation is militarily strong. We should see to it that our army, our navy and air force remain strong. That should be the directive that we should give to our future Government of India if only to achieve our laudable objective of "world peace". As it is, we are a pygmy in the world. Who cares for you unless you are strong? Unless your argument has guns behind it, nobody would appreciate your arguments. Our present position is weak. I do not say that we are weak against any of our immediate neighbours but to count in the International field, we should be a first-class power. Our aim should be to become a first-class power, a strong power, so that our voice, our pleadings and our arguments may have some weight and people may know that they should not annoy this great country and that would mean a war. So, Sir, I want to reserve one privilege as a man of war, that in case we fail to achieve these objects peacefully, we shall war and accomplish these objects. With these words of reservation, I support whatever you have said, because it is all a pious wish.

Dr. P. Subbarayan (Madras : General): Mr. Vice-President, Sir, I am proposing only a small verbal amendment to Dr. Ambedkar's amendment clause (c) and that is to use the word to 'foster' instead of 'sustain'. Dr. Ambedkar says that he will accept this amendment. The House will give me permission to move this.

Shri T. T. Krishnamachari (Madras : General): Why?

Dr. P. Subbarayan : The reasons are obvious. I think my honourable friend, Mr. Krishnamachari knows it as well as I do.

Shri M. Ananthasayanam Ayyangar : You want to use the word 'foster' instead of the word "sustain".

Dr. P. Subbarayan : Because 'sustain' will imply force. I do not think that we want to use force of any kind either in the future Government of India or in the Government as it is constituted today.

The Honourable Dr. B. R. Ambedkar : Sir, I accept Mr. Kamath's three amendments. I accept Dr. Subbarayan's amendment and I accept the amendment moved by my honourable friend, Mr. Ananthasayanam Ayyangar. I do not accept any other amendment.

Mr. Vice-President : The question is that for article 40, the following be substituted:—

"40. The Federal Republican Secular State in India shall be pledged to maintain international peace and security and shall to that end adopt every means to promote amicable relations between nations. In particular the State in India shall endeavour to secure the fullest respect for international law and agreement amongst States and to maintain justice, respect for treaty rights and obligations in regard to dealings of organised peoples amongst themselves."

The motion was negatived.

Mr. Vice-President : The question is that for the existing article 40, the following be substituted: —

"40. The State shall endeavour to —

(a) promote international peace and security;

(b) maintain just and honourable relations between nations;

(c) foster respect for international law and treaty obligations in the dealings of organised people with one another; and

(d) encourage the settlement of international disputes by arbitration."

The motion was adopted.

Mr. Vice-President : The question is that in article 40, the following words be added at the end;

"It shall also promote political and economic emancipation and cultural advancement of the oppressed and backward peoples, and the international regulation of the legal status of workers with a view to ensuring a universal minimum of social rights to the entire working class of the world."

The motion was negatived.

Mr. Vice-President : The question is:

"That article 40, as amended, stand part of the Constitution."

The motion was adopted.

Article 40, as amended, was added to the Constitution.

New Article 40-A

(Amendment No. 1026 was not moved.

Amendment No. 1027 in the name of Shri Algu Rai Shastri was allowed to stand over.)

Shri Gopal Narain (United Provinces : General): Mr. Vice-President, Sir, I gave notice of several amendments on the last date and I did it when I found that the Members of this august House have tabled thousands of amendments and they wanted that every pious and noble sentiment may be incorporated in this Constitution. I also ran in the race, though I was of the opinion that this Constitution has already become very lengthy. I also felt that it should not be filled up with all the details; otherwise it may be made more ridiculous. Now I find that better sense is prevailing and Members are not moving the amendments now. My purpose has been served and with these few general remarks. I do not want to move this amendment or any other amendments tabled by me.

(Amendments Nos. 1029 to 1031 were not moved.)

Prof. K. T. Shah: This is part of Part V and there is a big question of principle involved in it. I also thought that according to the understanding reached, we should now be going over to the earlier amendments. But I am in your hands, Sir. I do not mind moving this amendment now.

Mr. Vice-President : If you want to move it, you are at perfect liberty to do so. If you do not want to move it now, you may do it at another place.

Prof. K. T. Shah: I should like to reserve it when we come to Part V. I shall take it up then.

(Amendments Nos. 1029 to 1031 were not moved.)

Mr. Vice-President : That finishes Part IV.

Part III

Shri M. Ananthasayanam Ayyangar: May I request you, Sir, to take up Part III?

Mr. Vice-President: That is also to be found in the Orders of the day. We take up Part III. The first amendment is in the name of Professor K. T. Shah, amendment No. 238.

Prof. K. T. Shah: Sir, I beg to move:

"That for the heading `Fundamental Rights' under Part III, the following be substituted:—

'Fundamental Rights and Obligations of the State and the Citizen.' "

Sir, on an earlier occasion, while moving an amendment I pointed out that the Constitution seems to leave out completely the Obligations side of human behaviour, and insists more and more.....

Shri M. Ananthasayanam Ayyangar : Sir, I believe Professor K. T. Shah is moving amendment No. 238, to change the heading. May I request him to take this up after we dispose of the articles? The title as it is, is "Fundamental Rights". He wants to include Obligations also. After we dispose of this part, if we find that any articles referring to obligations are introduced substantively, then we can move for the change of the title. In case no article referring to any obligation, is introduced in the substantive portion, there is no purpose in changing the title to include Obligations also. I would request him to allow this amendment to the title to stand over until we exhaust the substantive provisions of Part III.

Prof. K. T. Shah : I am quite willing to agree to the suggestion that this may stand over. I would only point out to my honourable Friend that it is not merely a particular section or sections which include Obligations that would justify a change in heading. I would like by this change in the title to draw attention to an aspect of the Constitution which has been omitted. However, if I am allowed to holdover this amendment, I shall try to bring it to the notice of the House on a later occasion. Meanwhile, I agree to the suggestion.

Mr. Vice-President : This amendment stands over for the present.

(Amendment No. 239 was not moved.)

Mr. Vice-President : Amendment No. 240 stands over.

(Amendment Nos. 241 and 242 were not moved.)

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar : General): Sir, Amendment No. 243 becomes redundant. Article 28 has already been passed. If it has not been passed, this would have been necessary. I do not move this amendment.

Article 7

Mr. Vice-President : The motion before the House is:

That article 7 form part of the Constitution.

We will take up the amendments one by one.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That the following words be added at the end of article 7:—

'or under the control of the Government of India.' "

Sir, this amendment was thought necessary because apart from the territories which form part of India, there may be other territories which may not form part of India, but may none-the-less be under the control of the Government of India. There are many cases occurring now in international affairs where territories are handed over to other countries for the purposes of administration either under a mandate or trusteeship. I think it is desirable that there ought to be no discrimination so far as the citizens of India and the residents of those mandated or trusteeship territories are concerned in fundamental rights. It is therefore desirable that this amendment should be made so that the principle of Fundamental Rights may be extended to the residents of those territories as well.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, I beg to move—

"That with reference to amendment No. 246 of the List of Amendments, in article 7, the words 'and all local or other authorities within the territory of India or under the control of the Government of India' be deleted."

[Mr. Naziruddin Ahmad]

Sir, along with this, I desire to move the second part of amendment No. 247 because they are related and may be disposed of conveniently together. Sir, I beg to move—

"That before the words 'In this Part' the figures and brackets '(1)' be inserted and the following new clause after clause (1) so framed be inserted:—

"(2) The provisions of this Part shall so far as may be, apply to all local or other authorities within the territory of India or under the control of the Government of India."

At the time I gave notice of this amendment I thought that the whole of the article 7 as redrafted by the Drafting Committee would be moved together. But really only a small amendment has been moved to the original article 7. What I want to do by these amendments is to remove the words—"all local and other authorities within the territory of India" from the article and reintroduce them in a separate clause. In article 7 "State" is defined to mean the Parliament of India and the Government of the Legislature of each of the State *i.e.*, the provinces and the Indian States and other States and all *local and other authorities* within the territory of India.

This, I am very sorry to say, creates some amount of anomaly in this context. In fact I have no difficulty in applying the provisions of part III to local and other authorities *i.e.,* District Boards, Municipalities etc., but I object only to the Municipalities and District Boards and other authorities to be styled a 'State'. One honourable gentleman, Pandit Lakshmi Kanta Maitra, objected to the use of the word 'State' even to Indian States and the Provinces because they do not represent full sovereignty, but full sovereignty is not necessary for using the word 'State' in this connection. But I submit that by no stretch of imagination can District Boards and Municipalities be called 'State'. Therefore what I have attempted to do is to remove these words from the articles which should be renumbered as clause (1) of the article and add clause (2) just to say that "the provisions of this Part shall, so far as may be, apply to all local or other authorities etc." This avoids the anomaly of describing the local bodies as 'States' and at the same time attains the same object by removing those words from the body of article 7 and relegating them to clause (2). I submit this will remove the anomaly of District Boards etc., being described as 'State' and at the same time serve the purpose.

Syed Abdur Rouf (Assam : Muslim): Sir, I beg to move—

"That in article 7, for the word 'or' the word 'and' be substituted."

Sir, in this article we are going to enumerate what are the States and that enumeration is exhaustive and not merely illustrative. Therefore in my opinion the word "and" will be happier than the word 'or'. Though the word 'or' has got conjunctive sense, it has got other senses as well. In literature it may be quite alright but in matters of law where legal terms are to be used, when we can find a more concise word, we should not use less concise ones. Therefore I recommend this amendment for the acceptance of the House.

Mr. Vice-President : Now it is open to general discussion. I should have said Amendment No. 249 is blocked by Dr. Ambedkar's.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Sir, I consider that it is not advisable that an expression in a legislative enactment should bear different meanings in different parts of the enactment. It will create confusion. Therefore I wish this definition of 'state' had not been entered in this article at all. Further this expression 'state' includes the Government of India and its Parliament, the governments of the states, *i.e.*, the Provincial states, I think, and its legislature and the local bodies. I know that local authorities have been defined in the General Clauses Act, as District Boards and Municipalities. But I do not know what those 'other authorities' are. Is there any necessity for us to include other authorities which are not defined

either here or anywhere else? Therefore, Sir, as far as this Part of the Constitution is concerned, the State is defined in a manner which is comprehensive of all institutions, whether they are legislative bodies, executive bodies or executive authority or the municipal or district boards or for the matter of that even the co-operative institutions, or according to me, even other authorities, such as the sub-magistrates of a locality. So the word 'State' is used to include a man in authority under the circumstances anywhere. That is too wide a definition of the word 'State'. When this definition is given to the same expression used, say for instance in article 13 let us see what is its effect. I may read to you, Sir, sub-clause (2) of article 13.

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law, relating to libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State."

That means the local body or the executive of a province or even a Sub-Magistrate might pass any order or the local body might pass any bye-law or resolution modifying the Fundamental Right given under sub-clause (a) of clause 1 of article 13.

Now, it may be contended that the expression is "making any law". Now, let us see whether 'law' has been defined here. Law has not been defined for the entire part, but it has been defined for a certain article—article 8, clause (3). There, it is stated that—

".....law includes any Ordinance order, bye-law, rule, regulation, notification, custom or usage having the force of law in the territory of India or any part thereof."

But law has not been defined generally, but it has been defined only for the purpose of article 8, to cover any order that is passed, any bye-law; that suits very well there, as we are abrogating all laws which are inconsistent with Fundamental Rights. If any Magistrate or any municipal body passed any law which derogates from the Fundamental Rights, that shall be considered void. So far so good. But has law not been defined for the purpose of Part III? It may be argued from the analogy of the law defined under clause (3) of article 8, that any order or bye-law passed by a local body or order that may be passed by any other authority may be included in the expression 'Law' in Part III. But what that "any other authority" is, has not been defined. Therefore, it may be contended, and very rightly perhaps, that a Magistrate or a local body or even a collector or even a Minister might pass an order, or make a notification abridging the rights that are given under sub-clause (a) of clause (1) of article 13. Therefore, my submission is, especially in the absence of a definition of law, and in the light of the definition of law under clause(3) of article 8, it will not only create confusion, but it might tend to the usurpation of those rights, and to nullify and abridge the fundamental rights given under clause (1). Sir, I am aware that article 7 says, "unless the context otherwise requires,....". I know that it might be contended that that expression answers my objection. But my submission is this. It is not only law that is passed by a legislature that is law. What is law, must be made quite clear. Unless that is done, the executive might pass an order, or put out a notification and that too might claim to come under this expression. Otherwise, as far as this part is concerned, there is no place at all for any executive authority to make any law to make anything, say anything or do anything. You have stated in all these places—"Nothing...shall...prevent the State from making any law, imposing in the interests of public order restrictions on the etc. etc." That clearly shows that a magistrate might pass an order restricting the right of a person or persons to assemble peacefully. So, when this expression is susceptible of being interpreted as giving authority to a district magistrate, an executive body to abridge the rights given here, with equal weight it may be contended by a local body or by some other authority — and you have not defined your authority.

[Mahboob Ali Baig Sahib Bahadur]

Therefore, I submit, if it is meant that all the authorities mentioned in this article have got the right to abridge rights, the fundamental rights mentioned in clause (1) of article 13, it might lead to absurd results. As I said, a magistrate or even a petty officer in authority can rightly claim under this article to have the authority to abridge a citizen's rights. Therefore, my submission is, either this article is unnecessary, or if you really mean that any man or any officer in authority has got right to abridge the Fundamental rights, I submit that this clause should not find a place here at all. It leads to confusion.

I wish that the Member in charge of piloting this Constitution would make it more clear and satisfy us before we are in a position to vote in favour of this resolution.

Mr. Vice-President : I would request Dr. Ambedkar to enlighten us about the points raised here by Mr. Ali Baig. We are laymen and we would like to hear him.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I must confess that although I had concentrated my attention on the speech of my friend who moved this amendment, I have not been able to follow what exactly he wanted to know. If his amendment is to delete the whole of article 7, I can very easily explain to him why this article must stand as part of the Constitution.

The object of the Fundamental Rights is two-fold. First, that every citizen must be in a position to claim those rights. Secondly, they must be binding upon every authority—I shall presently explain what the word "authority" means—upon every authority which has got either the power to make laws or the power to have discretion vested in it. Therefore, it is quite clear that if the Fundamental Rights are to be clear, then they must be binding not only upon the Central Government, they must not only be binding upon the Provincial Government, they must not only be binding upon the Governments established in the Indian States, they must also be binding upon District Local Boards, Municipalities, even village panchayats and taluk boards, in fact, every authority which has been created by law and which has got certain power to make laws, to make rules, or make bye-laws.

If that proposition is accepted—and I do not see anyone who cares for Fundamental Rights can object to such a universal obligation being imposed upon every authority created by law—then, what are we to do to make our intention clear? There are two ways of doing it. One way is to use a composite phrase such as "the State", as we have done in article 7; or, to keep on repeating every time, "the Central Government, the Provincial Government, the State Government, the Municipality, the Local Board, the Port Trust, or any other authority". It seems to me not only most cumbersome but stupid to keep on repeating this phraseology every time we have to make a reference to some authority. The wisest course is to have this comprehensive phrase and to economise in words. I hope that my friend will now understand why we have used the word "State" in this article and why this article must stand as part of this Constitution.

Mr. Vice-President : I will now put this amendment to the vote. First of all, we have amendment No. 21 of Mr. Naziruddin Ahmad, which is an amendment to amendment No. 246.

The question is :

"That with reference to amendment No. 246 of the List of Amendments in article 7 the words "and all local or other authorities within the territory of India or under the control of the Government of India" be deleted."

The motion was negatived.

Mr. Vice-President : The next amendment is No. 246 moved by Dr. Ambedkar.

The question is: that the following words be added at the end of article 7:

"or under the control of the Government of India."

The motion was adopted.

Mr. Vice-President : Then we come to amendment No. 247 as amended by No. 22.

The question is:

That in article 7, for the words and inverted commas "the State" the word and inverted commas "State" be substituted, and before the words "In this Part" the figure and brackets "(1)" be inserted, and the following new clause after clause (1) so framed be inserted :

"(2) The provisions of this Part shall, so far as may be, apply to all local authorities within the territory of India or under the control of the Union Government."

The motion was negatived.

Mr. Vice-President : The question is: that in article 7, for the word "or" the word "and" be substituted.

The motion was negatived.

Mr. Vice-President : The question is: that article 7, as amended, stand part of the Constitution.

The motion was adopted.

Article 7, as amended, was added to the Constitution.

Article 8

Mr. Vice-President : Now we go on to the next article.

The motion is:

That article 8 stand part of the Constitution.

There are a number of amendments. No. 250 is by Dr. P.K. Sen but he is not in the House. No. 251 is in the name of Mr. Kamath.

Shri H. V. Kamath : I am not moving it.

Mr. Vice-President : Then there is No. 252 by Pandit Lakshmi Kanta Maitra.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Mr. Vice-President, Sir, I move to:

That the proviso to clause (2) of article 8 be deleted.

The purpose of this amendment is self-evident, and as I have been strictly enjoined not to make any speech I simply move this amendment.

Sir, I move.

Mr. Vice-President : Then there are amendment Nos. 253 to 258. Is any Member going to move his amendment?

The amendments were not moved.

Shri Lokanath Misra : Sir, I want to move amendment No. 259 standing

[Shri Lokanath Misra]

in my name. I beg to move: that after clause (2) of article 8, the following new clause be inserted and the existing clause (3) be re-numbered as clause (4):

"(3) The Union or the State shall not undertake any legislation or pass any law discriminatory to some community or communities, or applicable to some particular community or communities and no other."

In moving this new article I seek a thing more than supplementing article 35 which we have passed. Article 35 directs the State to do certain things, that is, to bring about a uniform civil code. My article simply says what the state should not do, so that it may not frustrate the very purpose for which article 35 has been enacted. Sir, deliberately we have chosen that our state is a secular state and we have tried to get rid of all the wronglings of religion because of the belief that although religion was made to unite mankind it has been found that it has disunited mankind and has brought various disputes. Rightly, therefore, have we declared that our State would be a secular State and thereby we mean that everybody who inhabits this land, everybody who is a citizen is just a man and his human needs will be fulfilled and his religion, if he has any, will be taken care of by the individual himself.

If we approve of this purpose, to give mankind that equality, that sense of justice, then when we are here to legislate for a future constitution, we must make it a fundamental right that we will not legislate in a manner and on a matter which will discriminate between one community and another. Our law must be so broad-based, must be so very intrinsically sound that it must apply to every human being, every citizen of this land. When you make any difference between citizens in this land, you can make it only on the lines of community and community directly means religion and we have deliberately eschewed religion. Therefore, to be frank enough, to be bold enough, to be true enough to our professions, we must make it a point that whenever we bring anything on the anvil of legislation, it must be such that it will apply to one and all of this land and there will be no differentiation. Let people say: We have one fundamental safeguard against inequality and injustice. Here is the law. It applies to everybody,—be he a Rajah, be he a Praja, be he a Hindu, be he a Muslim, be he a Parsi, be he a Christian. That itself is enough safeguard, because it will apply to every citizen equally. If the law is bad, it is bad for everybody; if it is good, it is good for everybody. Therefore, I say this must be a fundamental principle. We must accept it here and now that any law that henceforward we may be legislating must be applicable to one and all. To that effect, I candidly place before this House that to avoid all future doubts, all disparity, all discrimination, all distinction, we must make it a law and a fundamental law that the Union or the States shall not undertake any legislation or pass any law discriminatory to some community or communities, or applicable to some particular community or communities and no other. This House has very frankly, openly and boldly accepted the principle in article 35. I simply beg this House to make that article complete and self-sufficient. That gave only a direction; this gives a positive mandate for what we should not do, because by not doing all these things, by discriminating between citizens and communities we have divided the country and let it not lead to greater divisions. I submit that unless we accept this principle, our idea of a United Nation, of a united mankind and of equality of every citizen in this land will be frustrated. I therefore commend this new article to the consideration of this great House.

The Assembly then adjourned till Ten of the Clock on Friday, the 26th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 26*th November* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

STATEMENT *re* EIRE ACT

The Honourable Pandit Jawaharlal Nehru (United Provinces : General): Mr. Vice-President, Sir, the House is aware that certain developments have taken place recently in Eire which affects the relationship of Eire with other Commonwealth countries. On the 17th of November the Eire Act, entitled the Republic of Ireland Act, was given a first reading in the Dail. The second reading took place on the 24th of November.

In view of the close relationship that has existed between Eire and the other Commonwealth countries, it was considered desirable to clarify the position that would result from the passage of this Bill. The Government of India have been in communication on this subject with the Government of the United Kingdom and the Government of Eire and both these Governments have been good enough to inform us of the position, as they view it, that will arise after the passage of the Republic of Ireland Act. They have sent us the texts of the speeches made in their respective Parliaments on this subject.

As the passage of this Act might affect Indian citizens in Eire and Eire citizens in India, the Government of India are naturally interested in a clarification of this subject.

In the course of the speech made by Mr. Costello, the Prime Minister of Eire, on the second reading of the Republic of Ireland Bill on the 24th November in the Dail, he said:

"In the new Bill provisions will be made to ensure that Commonwealth citizens shall be afforded comparable rights to those afforded to our citizens in the British Commonwealth. There is one thing I should like to make clear to our friends in Britain and in the Commonwealth generally; it is that after the passage of this Bill we will continue, provided they so desire, the exchange of citizenship rights and privileges. Ireland does not now, and when the External Relations Act is repealed. Ireland does not intend to, regard their citizens as foreigners or their countries as foreign countries. Throughout, the position of the Irish Government is, that while Ireland is not a member of the British Commonwealth of nations, it recognises and confirms the existence of a specially close relationship arising not only from ties of friendship and kinship but from traditional and long established economic, social and trade relations based on common interests with the nations that form the British Commonwealth. This exchange of rights and privileges, which it is our firm desire and intention to maintain and strengthen, in our view constitutes a special relationship which negatives the view that other countries could raise valid objections on the grounds that Ireland should be treated as a foreign country by Britain and the Commonwealth countries for the purpose of this exchange of rights and privileges. These are the considerations which we put forward to Britain and the Commonwealth countries. We find that they, on their part, were equally determined not to regard the passage of this Bill as placing Ireland in the category of foreign countries or our citizens in the category of foreigners, but were prepared to continue the exchange of citizenship and trade preference rights. Accordingly, the factual exchange of rights that has existed hitherto will continue unimpaired. By reason of the fact that we have eliminated from this exchange controversial forms, we may reasonably hope that a greater spirit of goodwill and co-operation will actuate this factual relationship."

[The Honourable Pandit Jawaharlal Nehru]

On the part of the United Kingdom, Mr. Attlee, the Prime Minister, made the following statement in the House of Commons yesterday, the 25th November 1948:

"In 1937 a new constitution was enacted in Eire in which the Crown played no part. The Eire Executive Authority (External Relations) Act which was passed in 1936, however, authorised His Majesty the King to act on behalf of Eire in certain matters within the field of external affairs as and when advised by the Eire Executive Council to do so. In December 1937, the U.K. Government stated, after consultation with the Governments of Canada, Australia, New Zealand, and South Africa, that they, like those Governments, were prepared to treat the new Constitution as not effecting a fundamental alteration in the position of Eire as a member of the Commonwealth.

On the 7th September last the Prime Minister of Eire, Mr. Costello, announced that the Eire Government were preparing to repeal the External Relations Act. Subsequently, Mr. Costello confirmed this intention."

Mr. Attlee then refers to various discussions with the Eire Ministers in order to explore the consequences which would flow from the legislation proposed in Eire:

"As a result of these discussions the United Kingdom Government have been able to give the most careful consideration to the relations between the U.K. and Eire when the Republic of Ireland Bill comes into force. The U.K. Government recognise that, as has been stated by Eire Ministers, Eire will then no longer be a member of the Commonwealth. The Eire Government have however, stated that they recognise the existence of a specially close relationship between Eire and the Commonwealth countries and desire that this relationship should be maintained. These close relations arise on ties of kinship and from traditional and long established economic, social and trade arrangements based on common interest. The U.K. Government for their part fully associate themselves with the views expressed by Mr. Mac Bride and are at one with the Eire Government in desiring that these close and friendly relations should continue and be strengthened.

Accordingly the U.K. Government will not regard the enactment of this legislation by Eire as requiring them to treat Eire as a foreign country on Eire citizens as foreigners. The other Governments of the Commonwealth will, we understand, take an early opportunity of making a statement as to their policy in the matter.

So far as Eire citizens are concerned the position in the U.K. will be governed by the British Nationality Act, 1948. The Eire Government have stated that it is their intention to bring their legislation into line with that in Commonwealth countries so as to establish by Statute that in Eire, citizens of Commonwealth countries receive comparable treatment."

I should like to associate the Government of India with the Statements made in the Eire and British Parliaments and to say that we are perfectly prepared to continue on a reciprocal basis the exchange of citizenship rights and privileges with Eire. What our future relationship with the Commonwealth is going to be is a matter which, the House knows, is under close consideration and I trust that a satisfactory solution will be arrived at before very long. For the present we are concerned with the situation as it is. I should like to make it clear that after the passage of the Republic of Ireland Bill, we shall not consider Ireland in the category of foreign countries or her citizens in the category of foreigners, provided Ireland offers our country and our citizens the same rights and privileges.

I should like to add that between Eire and India there has been for a long-time past a close bond of sympathy and friendly feeling. The Government of India trust that as in the past there will continue to be close and cordial relationship between the Governments and peoples of Eire and India.

Shri H. V. Kamath (C. P. & Berar : General): May I request you to be so good as to direct that copies of the Republic of Ireland Bill and of the speeches made there on in the Dail Eireann, and by Mr. Attlee in the House of Commons are supplied to Members of this House, as also the statement made by the Honourable Pandit Jawaharlal Nehru?

Mr. Vice-President (Dr. H. C. Mookherjee): That can be supplied. For that we have got to obtain the documents first. When they are secured, they will be supplied to all the Members.

The Honourable Pandit Jawaharlal Nehru : In the statement I have already made I have quoted extensively from the speeches of Mr. Costello and Mr. Attlee in their respective Parliaments so that the honourable Member's point will perhaps be met if a copy of my present statement including the references to the statements made in the Dail Eireann and in the House of Commons in London is distributed. That certainly can be done. As to the copy of the Republic of Ireland Bill, certainly it can be made available, but I am not quite sure if it is possible to do so very soon. Perhaps it will meet the purpose of the House if some copies are obtained and placed on the table of the House.

Mr. Vice-President : That would meet the situation, I think. I now call upon Shrimati Durgabai to move the motion which stands in her name.

MOTION RE. ADDITION OF SUB-RULES TO RULE 38-P

Shrimati G. Durgabai (Madras : General): Mr. Vice-President, Sir, I beg to move the following motion standing in my name:

"(a) That the existing rule 38-P be renumbered as sub-rule (1) of rule 38-P, and to the said rule as so renumbered the following sub-rules be added:—

'(2) The President shall have the power to disallow amendments which seek to made merely verbal, grammatical or formal changes.

(3) The President shall also have the power to select for consideration and voting by the House the more appropriate or comprehensive amendment or amendments out of the amendments of similar import and any such amendment not so selected may, unless withdrawn, be deemed to have been moved and may be put to the vote without discussion'."

Sir, let me make it clear at the very outset that my object in bringing this motion before the House is mainly to secure quicker disposal of the very large number of amendments so far received to the Draft Constitution and thus expedite the work before us. I believe there are already more than four thousand amendments received to the Draft Constitution. I consider that it would be very difficult for us to consider such a large number of amendments within a reasonable time and therefore it is considered essential that a special procedure should be devised in order to secure quicker disposal of the work and also expedite the work. Sir, the procedure suggested by me in the amendment placed before you, if adopted by the House, would not only help us to secure this object but also enable us to spend the limited amount of time available on more useful amendments and also amendments of a substantial nature. The object of the rule is to give the Chair the power to select the more appropriate or comprehensive amendment or amendments out of the amendments of similar import. It also gives the Chair the power to disallow such amendments as seek to make merely verbal or grammatical or formal changes. Sir, before I commend the motion for the acceptance of the House, I appeal to all to understand the scope of my amendment in the spirit in which it is

[Shrimati G. Durgabai]

placed before you. It need not create any fears or apprehensions in the minds of Members or any section of the Members of the House that it seeks to curtail their privileges. In giving this power to the Chair, I do not think that we are doing anything unusual and I am also sure that the Chair in exercising this power would displease none but please all. We have ample reason to believe that the Chair would be very judicious in exercising this power. With these few remarks I commend my motion to this House for its acceptance.

Mr. Vice-President : We shall now take up the amendments one by one.

Mr. Naziruddin Ahmad (West Bengal: Muslim): May I offer my remarks now?

Mr. Vice-President : There will be general discussion after the amendments have been moved. You would be given sufficient time to put your point of view before the House. The first amendment stands in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I think it is my duty, while moving the amendments which stand in my name, to give expression to certain general thoughts which arise in my mind, but before doing so it will be proper for me to move the first amendment, which stands in my name. Sir, I beg to move:

"that in the proposed sub-rule (2) of rule 38-P, after the words 'President shall', the words 'after hearing the Member who has given notice of any amendment' be inserted."

Mr. Vice-President : Are you not moving amendment No. 1?

Mr. Naziruddin Ahmad : I am sorry, I missed it. I also move:

"that the proposed sub-rule (2) of the rule 38-P be deleted."

Mr. Vice-President : I suggest, Mr. Naziruddin Ahmad, that you also make now any general observations you wish to make.

Mr. Naziruddin Ahmad : I bow to your ruling.

Sir, I should have thought that the rules, which are in existence and which have been framed after a considerable amount of care and based on other models, are sufficient to give ample power to the Chair to regulate the debate. These rules were framed on the supposition that the Members also exercise a considerable amount of discretion and restraint in their speeches. The present motion implies a kind of suspicion about the willingness and ability of the Members to keep to that wholesome line as well as perhaps a little doubt as to the ability of the Chair under the ordinary rules to regulate the debate. What are the rules which are applicable to this situation? An amendment can be ruled out very justly if it is irrelevant, mere tedious repetitions and the like, defamatory or unparliamentary or objectionable from that point of view. What has happened which has induced the charming lady to come forward here to move this amendment? I submit that the experience of what has happened in the House gives a clue. For some time past, I very much regret to find that amendments of a so-called drafting or formal nature or of some grammatical significance are being ruled out practically in the debates, not that you, Sir, rule them out, but in the treatment of those amendments, Members are to a certain extent hustled by some Members in the House and the replies given are often few, laconic and unhelpful, and in many cases there are no replies but a large number of counter-allegations and facts are adduced.

I submit that a consideration of the proposed rules will show how carelessly these amendments have been drafted, and what mistakes lie almost in every line of these amendments. It is from a consideration of these amendments alone that the great necessity of allowing drafting improvements follows.

Sir, the motion is to the effect that the President shall have the power to disallow amendments which seek to make merely verbal, grammatical or formal changes. I have already submitted that they can always be ruled out on grounds or irrelevance, repetition and various other well-known reasons. But can they be properly rejected, merely on the ground that they are verbal? Can there be any amendment which can be described as merely verbal which changes the meaning of the context? Then, there is the question of grammatical amendments. I think the little mistakes which the honourable Mover of the Draft Constitution has committed have startled many Members. I ask you, Sir, in all humility : should you rule out an amendment merely because it is a grammatical amendment? Does it necessarily follow that a grammatical amendment is an unsubstantial amendment, that it has no relation to the clauses to which it appertains? I believe grammar is an agreed set of rules for the sake of clarity and clearness of meaning. Grammar is nothing if it does not add to clarity of thought, expression and writing. In these circumstances, I believe that the proposed sub-clause (2) of rule 38-P is absolutely misconceived.

Then coming to formal changes, can you rule out a formal change or should you rather be inclined to rule out a mere verbal-looking change because behind a verbal-looking change, there may lurk an important change in the meaning of the passage? In these circumstances, I beg to submit that there is a fear that though all the Members have absolute confidence in the strict impartiality and extreme kindness with which you have been dealing with them, there lies a suspicion behind these changes that the Honourable Mr. Vice-President will perhaps be unable to regulate the procedure with the existing rules. I submit, Sir, that Members have always shown a disposition cheerfully, willingly and readily to obey your rulings and your helpful guidance. I submit it would be far better to leave the matter in the hands of Members, leave them to the good sense of individual Members and the good sense of the House. Instead of trying to force the hands of Members and to a certain extent put you, Sir, in an awkward position, I submit that these rules should go. These are the things which strike me at the moment. For some time, I feel that amendments of a drafting or formal nature or which look like them are being regarded with some amount of disfavour. They are being apparently rejected without any debate, without any argument and without any sufficient consideration. I submit, Sir, that this gives a sense of frustration amongst Members who have come here in a humble capacity to assist in the framing of a first-class Constitution. Sir, the momentous Constitution which we are making today would be a farcical affair otherwise. It would be copied as a model by other Constituent Assemblies in the world. We find hundreds of years after the speeches, the proceedings of Constituent Assemblies are read by constitutional lawyers and historians with a great deal of interest. I ask you, Sir, and my honourable Friends in the House as to whether these proposed changes are at all called for and whether they do not cast a suspicion upon the general body of Members as well as individual members as to their willingness and ability to stick to the strict rules of business.

Sir, as to the drafting of these rules, the less said the better. I submit that the proposed clause (2) is absolutely unnecessary. Then coming to clause (3), we have a startling piece of draftsmanship and I say that it has been so carelessly, so hopelessly drafted that it should be rejected on the face of it altogether. That shows the need of a careful revision in the House of a far more important document than these amendments themselves, namely, the Constitution. Sir, in clause (3), the first part deliberately clashes with the second.

The first part, Sir, seeks to select certain amendments for consideration. For what purpose? The amendment says "the amendment not so selected may be put to the vote". What do we come to? You have been specifically

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requested to select an amendment and for what purpose? The purpose is to select the amendment and then put to the vote a different amendment, namely, the one *not* so selected! Therefore, I beg to submit the very drafting of clause (3) is absolutely, hopelessly and ridiculously faulty. I have never spoken in this strain at any time in this Assembly, but circumstances, tendencies and the whispers we hear all round compel me to speak like this. Can the House accept clause (3) where the latter part absolutely rejects the former? I submit, Sir, I have tabled an amendment to remove the word 'not' and then you can make some sense out of it. I shall request you to reject this amendment because it is 'verbal' and because it is verbal I shall bow to your ruling. We will have enacted a piece of legislation which shall have no meaning at all. While pointing out the dangerous character of the word 'not', I shall seek your permission not to move for its deletion and leave the House and the honourable Members to consider what has been really achieved.

Then, Sir, I submit, part (b) seeking to introduce Rule38-W is also mischievous. It is also badly conceived and badly drafted. What is the effect of this rule? It purports to remove a lacuna, that is the supposed absence of any power of the Vice-President to act as President within the meaning of certain rules. Sir, I find on a close examination that the powers of the Vice-President have never been defined with clarity, and it is attempted at this late stage to meet the situation. I submit, Sir, that as we have provided for a Vice-President without defining his powers, it is obvious that the Vice-President has the powers of the President or the Chairman, as the case may be. Supposing for the sake of argument that a further clarification was necessary, Rule 38-W falls far behind the requirements of the situation. I submit that it is attempted by this Rule to regularise any irregularity which may have been committed by you, Sir, in giving rulings, declaring decisions regarding the orders of the House. If for one moment we can assume that you have been acting illegally—which I hope and believe you are not—once we concede that you have not been acting with jurisdiction, then, this power given by the proposed Rule 38-W will not legalise what has happened already. In fact, if it is supposed that you have no power to do anything beyond the mere fact of presiding, then, what will happen to the acts done by you, Sir, as the presiding officer of this august House, before the passing of the rule? I have attempted to regularise the procedure. I should have thought that such a suspicion was unnecessary; but If the suspicion has any legal basis, if you entertain any suspicions in this respect, you should have something by way of introducing a new Rule 14-A as I have suggested in my amendment, that the Vice-President shall have all the powers of the President in certain respects, with the important Explanation that this Rule shall have retrospective effect as if it was passed on the 4th of November or from the date on which you have been pleased to preside over the deliberations of this House.

In an amendment of a rule consisting of only two provisions, one an amendment to Rule 38-P and the other a new Rule 38-W, there are so many gross errors. I submit that this will show.....

Shrimati G. Durgabai : Mr. Vice-President, Sir, I have not moved that part of the motion (b).

Mr. Vice-President : That has not yet been moved.

Mr. Naziruddin Ahmad : I realise the force of this submission. But, am I to understand that this will not be moved?

Shrimati G. Durgabai : I have only moved the first motion.

Mr. Vice-President : Why not put it conditionally, 'if'.

Mr. Naziruddin Ahmad : 'If' such a motion is moved afterwards, it shows lack of appreciation of the points in issue. I was suggesting certain considerations from a general point of view: do we require drafting amendments or what are merely described as merely drafting amendments as distinct from substantial amendments—as if drafting amendments are not substantial amendments? This un-precise way of thought is staggering to those who have any experience in this line. I submit that the entire House would rather protest against the introduction of these Rules. We are entitled from the draftsmen or from the members in charge of these legislations some clarity of thought, clarity of expression and purposeful writing. I submit, Sir, these Rules lack all these essential qualities.

On the merits, I submit, Sir, sub-rule (2) should go. You cannot be asked to rule out an amendment merely because it is 'verbal', 'grammatical' or 'formal'. I submit, the powers which you have got already, the great traditions which we have hitherto built up and the great rules of the House of Commons and other Parliaments which are before us are quite sufficient. The most important thing is the good sense of the Members and Movers. In this respect, so far as I am concerned, Sir, I am perfectly willing to obey the slightest wishes of the House properly expressed, privately or publicly. What are you going to do with regard to mistakes of a similar nature which lurk everywhere in the Constitution? Not that these mistakes show any lack of power or draftsmanship on the part of the eminent authors of the Bill; but every Bill should be revised. We have not got a second Chamber. The Bill has not gone through a Select Committee. At an earlier stage, I suggested a select Committee; that is the place where drafting amendments and other things could be coolly and properly discussed. That was ruled out on the ground that it was dilatory. Some of the amendments were carelessly described by eminent members as merely dilatory or of a frivolous nature. I think the word 'frivolous' cannot be applied to any Member of this House. If there is anything frivolous, the rules give you ample power to rule them out. I submit from every possible point of view, from the point of view of general convenience, from the point of view of general efficacy of the rules which have been found efficacious so far, these new rules should be dropped.

Am I to move all the amendments, Sir?

Mr. Vice-President : I think you had better move all the amendments which stand in your name dealing with sub-rules (2) and (3). If you want to make any further observations, you are at liberty to do so.

Mr. Naziruddin Ahmad : In regard to amendment No. 2 which I have already moved, I have sought to introduce a clause that before rejecting an amendment, you would be pleased to give the Member who is ruled out a chance of expressing his opinion, giving his reasons. I have no doubt that while rejecting an amendment on the ground suggested in the rule, in view of the fact that your hands are attempted to be forced, I think this provision should be necessary. But I may well leave it to the good sense of the House and your innate sense of justice and fair-play which you have so far displayed. Then I come to amendment No. 6.

I beg to move:

"That in the proposed sub-rule 38-P, for the word 'amendments' the words 'such amendments' be substituted."

This is only verbal.

Then I move No. 8:

"That in the proposed sub-rule (2) of rule 38-P, the comma after the word 'verbal' and the word, 'grammatical' be deleted."

I submit the office or officer who has dealt with the amendment is apparently unfamiliar with this method of expression of a deletion or a comma and a word. In fact for purposes of clarity this is perfectly admissible as is shown by all

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the leading authorities on legislative drafting. I submit it often happens that if I move for the deletion of the word "grammatical", the effect would be that the comma is left behind which would be wrong. They two go together but they have been treated by the office as separate amendments. Then, Sir, I also move amendment No. 9:

"That in the proposed sub-rule (2) of rule 38-P the words 'and to remit them to the Drafting Committee' be added at the end."

I do not exactly know my own position. Unofficially I am hearing that I am the object of these proposed rules. I am the target. It is an open secret that I am the target—not the unhappy target but the happy target. If that is so, I should acknowledge a deep debt of gratitude to the honourable lady Member who has done me this signal honour, *viz.*, proposing the most unconstitutional, most undemocratic rule expressing want or faith in a particular Member in the House and also with a lurking suspicion about the ability of the Chair—whoever may be for the time being occupying the Chair—his ability to conduct the proceedings of the House. Sir, in these circumstances I feel highly honoured by this. My object is not to carry amendments. My object is in my own humble way to suggest improvements. It may be that in the ultimate analysis and on further consideration, I may be proved to be wrong and my amendments unsubstantial. I shall be very glad if they are ruled out after consideration but that is not what is taking place. I have not been moving all my amendments. There are similar amendments in various groups where I have moved only one as a type and I have refrained from moving the rest because I know the same arguments will be repeated. In these circumstances I beg to submit that the rules should not be directed against one or two men. The other rule is—Part (3) of the rule—perhaps directed against another respected and indefatigable member of the House, *viz.*, Professor K. T. Shah. In fact this is the impression which is freely being given out. I do not think, Sir, you should be given rules to gag Members. Even if the rules are accepted by the unanimous vote of the House you will not exercise them without asking for the reason, without knowing the purpose and the effect of the amendments. I submit amendments cannot be ruled out on their face value. They may have, and they often have, very substantial value. I submit the way the amendments are being dealt with in the House gives colour to that impression. While we are framing the Constitution, while we are providing for freedom of thought and expression and action subject to certain well-recognized checks, here you are checking, curtailing the very freedom of debate, the freedom of an individual Member who has devoted some time and energy in a humble attempt in a most insignificant capacity to improve the drafting. But I am not discouraged by the fact that they are not accepted. A good work according to philosophers is its own reward and I shall be happy if after all these, these rules are accepted and my amendments are ridden roughshod over. Provided I have attempted to do my duty, I shall be happy. If I am ruled out the responsibility will not be mine. The responsibility will be that of the members and of you, Sir. I submit that these rules should be withdrawn. From a drafting point of view they are badly handled and they are misconceived. They give out a very bad odour. There is something like a High Command feeling behind these rules. I submit that this gives the impression of totalitarianism. If you do not tolerate the reasonable debate of the minority—I am using the word minority not in the communal sense but in a numerical sense—then the freedom that you think of would be a mockery. If this Constituent Assembly should show us this example, then the underlings of Government, the various Provincial Authorities will ride rough-shod over the minority and that is fatal to democracy. The efficacy of democracy is the right given to a minority to express their views freely, subject only to rules of relevancy and other rules which are well known. These artificial rules

for the sake of decency, for the sake of appearance and for the good name of the House, should be dropped. I submit, Sir, these proceedings will be read all the world over and I submit that we should.....

Mr. Vice-President : May I point out that these should come towards the end. There are several amendments standing in your name which should be moved first of all.

Mr. Naziruddin Ahmad : Sir, I move:

"That the proposed sub-rule (3) of rule 38-P be deleted."

No. 13, about the absurd word 'not', I do not move. I will leave to the honourable Member in charge of the amendment to keep it and try to make out a meaning.

Mr. Vice-President : Mr. Biswanath Das—Are you moving No. 15? In that case Mr. Naziruddin Ahmad will not move it.

Shri Biswanath Das (Orissa: General): I will move it.

Mr. Naziruddin Ahmad : May I say what I feel about it. With regard to amendment No. 15 which my honourable Friend has kindly intimated his desire to move, I may say that it will not do to proceed without a discussion. The proviso that you will select some amendments without discussion is purposeless and meaningless. There should be discussion. How can you ask the House to give its opinion without discussion? After all democracy is Government by debate, by free exchange of thought, but what is attempted to be given here is an authority to be given to you to select amendments without discussion.

Then, Sir, I move amendment No. 17:

"That after the proposed sub-rule (3) of rule 38-P, the following proviso be added:

'Provided that before the President so selects any amendment, the member who has given notice of any amendment shall have the right to explain the nature and purport of his amendment'."

I have made my purpose absolutely clear. I submit that all the safeguards which I have suggested are necessary, or we should content ourselves with the existing rules.

Sir, in case there are mistakes of the nature I have suggested, should we allow them to go on uncorrected, and to remain in the Constitution as so many faults and blemishes? Or should we ask the Drafting Committee to revise them and correct them where necessary? What should be the procedure, and what are the characteristics of the amendments which should be left to the drafting committee? How will the Drafting Committee understand the meaning and purport which a member attaches to his amendment if you do not give him an opportunity to explain them? Is he to dance attendance on the Drafting Committee and be its suitor, or should he be a litigant humbly making his submissions before the Drafting Committee? Sir, these are weighty considerations for removing the blemishes in the Constitution. I have said enough and if this does not convince the House, and if still I am ruled out, I shall cheerfully bow down to the decision of the House, knowing that I have discharged my duty. Thank you, Sir.

Mr. Vice-President : I have to inform the House that I have in my hand a letter of authority from our President which I shall read out, and I think that will clear up much of the misunderstanding. It runs thus:

"I hereby delegate to the Vice-President, Dr. H. C. Mookherjee, my powers and duties under all the rules in Chapter VI of the Constituent Assembly Rules excepting rules 38-U and 38-V therein."

Shri B. Das (Orissa: General): Sir, on a point of information. I would like to know if there is any time limit on speakers on this motion. If there is none, I suggest, you have the prerogative to lay down a time limit so that filibustering speeches may not be made.

Mr. Vice-President : I am not inclined, in a matter of such vital interest, to place any time limit on any one, so long as irrelevant matters are not introduced in the discussion.

Now, Mr. Kamath may move Amendment No. 3.

Shri H. V. Kamath : Mr. Vice-President, Sir, the motion moved by my honourable Friend Shrimati Durga Bai seeks to clothe or invest the President with certain extraordinary powers, and as a consequence, to abrogate or abridge the inherent rights of Members of this House, either inherent or conferred upon them by the rules of procedure which we have already passed. I am sure that none of my colleagues here, no colleague of mine here, will lightly or willingly surrender any of his rights, and I am equally sure that the President and you, Sir, will, as you have always been, be zealous in the vindication of the rights of Members of this House. I desire, therefore, to request my colleagues here to bestow their very earnest consideration on the motion before us today, and I would appeal to you, Sir, also to permit a full discussion on the motion before the House.

Coming now to my amendment, Sir, it is purely a verbal amendment which seeks to bring this clause or sub-rule inconformity with the rules that we have already passed. If the House turns to rule No. 31, sub-rule (4), the language employed there is—

"The Chairman may disallow any amendment which he considers to be frivolous or dilatory."

But the expression here that—"The President shall have the power to disallow . . ." is a very clumsy expression. I have not seen it used in any of the rules which make up this booklet which is with every one of us—Rules of Procedure and Standing Orders. It is far more correct to say that "the President may disallow amendments. . . . etc." On this proposed sub-rule (2) I have to make one observation. This seeks to give special powers to the President by empowering him to disallow amendments. But after being disallowed what will happen to these amendments? Will they be consigned to the waste-paper basket or even to some less envious fate? Under rule 38-R even suggested changes in punctuation and marginal notes have to be referred to the Drafting Committee. If so, I do not see why we should not adopt the very amendments. I am glad to see that my honourable Friends Mr. Pataswar and Mr. Gupte have tabled amendments to this effect and I hope the House will agree to this course, namely, that all these amendments disallowed under rule 38-P(2) shall be referred to the Drafting Committee for consideration and necessary action.

Then, Sir, I shall not move amendment No. 7 because If the amendment suggesting reference to the Drafting Committee is adopted, there is no need for this to be moved.

My next amendment is No. 11 which relates to rule 38-P(3), and in which for the words "The President shall have power to select", etc., I seek to substitute the words "may select", etc. The reasons I gave for my first amendment apply with equal force to this also.

I then come to my amendment No. 12 which seeks to insert the words "same or" before the word "similar". Instead of saying "amendments of similar import" I think it is more comprehensive to say "amendments of the same or similar import".

My next amendment is No. 14 which seeks to substitute the word "may" for "shall" wherever it occurs. Under the existing rules the President has two kinds of powers,—discretionary and mandatory. In the Rules of Procedure which we have adopted, you find that in the case of mandatory powers the word used is "shall" and in the case of discretionary powers the word used

is "may". Rule 33 says that the President has no discretion and has got to put the motion to the vote. Here when the President has selected for consideration and voting any one amendment or amendments which in his judgment are proper or comprehensive, all the other amendments which have not been so selected must be deemed to have been moved and must be put to the vote. There is no discretion allowed to the President and the word "shall" in place of "may" will bring out the meaning of the proposed sub-rule.

Here again the construction of the proposed sub-rule is to my mind very defective. It is said here that any amendment not so selected may, unless withdrawn, be deemed to have been moved. But an amendment cannot be withdrawn unless it has been moved in the House; it can be withdrawn then only by leave of the House. I do not understand, therefore, how the proposed sub-rule is to be construed, *i.e.,* an amendment shall be deemed to have been moved unless withdrawn. The question of withdrawal arises only after it has been moved in the House; therefore this portion of the sub-rule has to be rewritten and recast.

Again I fail to see how any motion can be deemed to have been moved unless it is actually moved in the House. It is a strange procedure which, I am sure, will not be sanctioned in any other legislature in the world. Unless an amendment is formally moved in the House the President cannot assume that it has been so moved. I submit that this is a fundamental matter and I hope the House will not accept the amendment as it stands. If the Member does not want to move the amendment he will say so; and if he wants to move it he must be given a chance to move it in the House, and if it is not so moved it should be deemed to have been not moved at all. If it has not been moved it certainly cannot be put to the vote. So any amendment that a Member wishes to move must be formally moved in the House. The proposed sub-rule seeks to abrogate the right of a Member to move an amendment in the House and seeks to confer that power indirectly on the President. I do not see how this can be done—is it by some sort of jugglery or magic? If we adopt this procedure it may waste more time of the House and the remedy may be worse than the disease. Therefore I have tabled the proviso amendment No. 16, which reads:

"That in the proposed sub-rule (3) of rule 38-P, after the words 'without discussion' at the end, the following proviso be added:

'Provided that a member whose amendment has not been so selected for consideration shall, if he so desires, be permitted by the President to state why his amendment should be considered'."

This, Sir, seeks to protect and vindicate the inherent right of a Member of this House, and I am sure, Sir, that you will be the last person to abrogate or abridge any of the inherent rights of Members of this House.

To illustrate my point, I would only say this: that this amendment to proposed sub-rule 3 relates to amendments of substance—substantial amendments. Therefore, no Member here, I hope, will surrender to the President his right of moving amendments in the House.

It may be argued that the President will select wisely such an amendment which covers all the other amendments tabled on that subject, or which are of similar import. Perhaps this may be acceptable in case the President gives priority to those Members who have tabled amendments to participate in the discussion. But even that, Sir, I personally will not accept and every Member who wishes to move his amendment must be given the right to move it in the House.

Take, for instance, the amendments that have been suggested to the Preamble to our Constitution. There are various amendments invoking God. Perhaps, the President advised by the Drafting Committee, or the Consultative Committee, or some other persons in high places, might select one of

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these amendments. But if you peruse them and scrutinise them carefully, you will find that every amendment, besides an invocation to God, does contain certain other matters which are not covered by other amendments, and certainly if only one amendment is selected and the rest are not, Members who have given notice of the other amendments will have no chance to put their point of view before the House.

I therefore appeal to this House and to you not to pass this motion as it has come before the House. It has got to be drastically and radically reworded and recast so as not to infringe the rights of the honourable Members of this House. If I may be pardoned for saying so, if this motion is passed as it has come before us, I have no doubt in my mind that this sovereign body, the first sovereign body in India's recent history, will become the laughing-stock of the world.

Shri Biswanath Das : Sir, I move:

"That in the proposed sub-rule (3) of rule 38-P, the words 'without discussion' be deleted."

I do not know whether I have to thank myself or be sorry that I should have been scheduled with my honourable Friend, Mr. Naziruddin Ahmad, though altogether from a different point of view. Sir, in the first place, I must frankly state that I fully support my friend, Shrimati Durgabai for this amendment. This is a very necessary and useful one and has our fullest support. The reason for this is that we have been here for the last three weeks, and need I say that we have not been able to finish even 21 articles in the course of these 21 days that we have been sitting. The country outside is anxiously waiting to have a Constitution for our country so that the new set-up will be in working order at least from 26th January 1949. That being their anxiety, we share with our countrymen this anxiety. We are anxious therefore to see that this phase of our activity should terminate as early as possible. From that point of view I welcome and support the resolution of my friend, Shrimati Durgabai.

Having stated so far, I will state why I have given notice of this amendment. I will just take the stages that we have been following in connection with our work, namely: first, we have passed the Objectives Resolution and thereafter motions for appointment of committees came before this House. They were discussed on each occasion. The committees sat and deliberated and submitted their reports. The reports were discussed threadbare in this House—word byword and phrase by phrase—and they were voted upon. Principles were determined and all these were handed over to the Drafting Committee—a set of expert gentlemen elected by us—to put them in proper phraseology. It has been seen in the course of these 21 days that the honourable Members of the Drafting Committee have, so far as possible, brought in expressions and used those with great care and caution from constitutions of countries which have been working their constitutions for ages. If English language, a comma, a full stop, idioms, or any set phraseology has to be questioned, I should say they have done ample justice in their selections and in the choice of their expressions and phrases. These have been amply demonstrated in the course of our discussions both here and elsewhere. That being so, there is, I believe, little need for us to waste time over verbal, grammatical or formal changes in words and phrases in the shape of amendments.

If one day has to be allotted for one article. I am afraid we have to sit for more than one year because we have 313 articles and then there are eight schedules each of which also has a number of sections. I shudder to think what extent of time will be necessary if we have to go on discussing every amendment of which notice is given, irrespective of the fact that what it wants discussed is perhaps a comma, a semi-colon, a grammatical error, etc.;

which have also to be debated and voted upon in this House. Under the circumstances the resolution that has been moved by Shrimati Durgabai is very necessary after our experience of the last 21 days.

Looking at the Chair, I must frankly say that, you, Sir, have given us ample scope, despite protests from certain quarters, to express our views and have on no occasion given room for any honourable Member to feel that his point of view was not allowed to be properly placed before the House.

Speaking of the Congress party, I may mention that we have been meeting from day to day not even excluding Sundays for two, three and four hours at a stretch discussing these amendments and other possible and necessary amendments. I feel, Sir, that the Consultative Committee appointed by the Congress party is doing ample justice to their work and that explains why new amendments that have not been given notice of by honourable Members have also been brought in, discussed and adopted by the House. All these go to show that ample caution is being exercised in this regard in our anxiety to see that a proper Constitution is evolved.

Sir, the motion moved by Shrimati Durgabai is comprehensive enough. It gives scope for fair discussion and expresses the fullest confidence in the Chair to give ample opportunities to Members to discuss all aspects of every question. It makes mention of 'comprehensive amendment'. It is very clear. To give an illustration: Suppose amendments 1, 2, 3, 4, 5, 6, 7 and 8 have been given notice of. The Vice-President selects No. 8 or 7 and 8. These will be fully discussed and all shades of opinion would be placed before the House before the vote is taken on them. But I do not know why Shrimati Durgabai says at the end of the proposed sub-rule (3) 'without discussion'. Nothing is being done without discussion. We discuss the whole thing. Nothing remains to be discussed after the comprehensive amendments have been debated, and that is why I have tabled my amendment for the omission of the words 'without discussion'. I differ from my friend Mr. Naziruddin Ahmad in thinking that any amendment is put to the vote without discussion. That will be an injustice to the Honourable House and is never done. The procedure of the Constituent Assembly is different from that of the Legislatures. The Constituent Assembly has got its own procedure which allows full scope for the discussion of resolutions and other motions. If our friends want to take in Constitution-making as much time as the representatives of the States took in America in the 18th century, we will have to sit at it for one or two years and even more. Are my friends willing and anxious to devote that amount of time for this purpose? I say that the country is anxiously waiting for a Constitution. We want to bury alive this Act of 1935 as early as possible. How long are we to go on with Adaptations? Therefore, I request my friends to accept the motion before the House, of course without the words 'without discussion', for, nothing is done here without discussion.

Sir, in this work-a-day world, we cannot afford to spend so much time over a Constitution which may be changed in course of time. After all, the provisions for effecting a change in the Constitution are more elastic than those provided in other Constitutions. Under the circumstances there need be no anxiety on this score.

Before I conclude I would quote a story from Srimath Bhagavatham. Emperor Khatwanga was taken to Heaven. It was then found that he had still a few *nimishas* or seconds of life on earth still remaining. He runs away from the heaven with the idea of serving his people even during those few remaining seconds. What should we learn from this? Are we to stay long here discussing commas and semi colons in these days of trouble, strain and distress throughout the country? Why cannot we leave these to the Drafting Committee of experts who have spent so much of their valuable and useful

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time on it? In the circumstances I appeal to my friends to accept the motion with the amendment I have suggested.

With these few words I move my amendment.

Mr. Vice-President : The amendments are now open for general discussion.

Shri Damodar Swarup Seth (United Provinces : General): Mr. Vice-President, Sir, with your permission and to my great pain and sorrow, I propose to oppose the motion moved by honourable Shrimati Durgabai and oppose it, Sir, with all the vehemence at my command. Sir, I wonder whether we are considering the Draft Constitution of free Independent India clause by clause in all seriousness and solemnity or whether we are rushing through an emergency legislation to be passed by a certain date and if it is not passed by that date, the heavens will fall and the earth will stop moving on its axis. Already, a very large number of amendments have been whipped off and vetoed by the majority party and more will be vetoed by them in future. And now this motion to amend the rules to give more power to the Honourable the President to disallow certain amendments; if that is the attitude, it is possible that the majority party or the party in power may have their own way, but, Sir, it will not be possible to deceive the Indian people that this Constitution has been made by them and for them. We may deceive the world outside, but we cannot certainly deceive our own selves. Because the majority party have got in their hands the proverbial lathi, they can have the proverbial she-buffalo of their choice, but what about the Indian people and also what about the party in majority too? As I have just said, a very large number of amendments which ought to have been moved by the members of the majority Party have been vetoed. So, there is no democracy even in the majority party, what to say of others, Sir. It is dictatorship of the party bosses pure and simple. I therefore say, Sir, that the motion is not suited to the conditions of the day. I have full faith in the dignity, impartiality and honesty of the Chair and I have every hope that the Chair will uphold the rights of the House. But, Sir, the passing of this motion will mean that we have bid good bye to democracy. Democracy requires that every amendment here, every amendment tabled, must be discussed in all its aspects. There should be no party-whip for not moving amendments. As I have said, Sir, we are not doing anything that can be characterised as an ordinary job. We are considering the Draft Constitution of free, independent India; we are moulding our destiny. So, no amendment which has been tabled should be disallowed. If amendments are vetoed like this, that will be a negative attitude to democracy. I therefore, Sir, appeal in all humility even to the members of the majority party that it is in their own interests as also in the interests of the public, that they insist on moving every amendment and discuss it in all its aspects. By doing that, they will be doing the sacred duty which has been entrusted to them by the Indian people. If, however, they in their intoxication of being in majority, neglect this duty, then they may pass this Constitution as they like but the Indian people will never own that Constitution. As I said on a previous occasion, I repeat once more that this Constitution has not actually been made by the Indian people and it will at best be considered to have been made and passed by only fifteen per cent. representatives of the population of this country and that too by indirect election which in the words of Professor Laski maximises corruption. I therefore hope, Sir, that this House will seriously ponder over this motion and reject it and will give the House an opportunity to discuss and consider in all their aspects all the amendments which have been so far tabled.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I am much obliged to you for allowing me this opportunity to express my sense of deep regret and resentment against this amendment to the rules calculated to pounce upon what little liberty of speech we have in this House. We, Sir, may not

be all able to cast pearls of wisdom before honourable Members; but I trust that you will not regard, and those responsible for drafting this Constitution will not regard, us all as swine before which pearls of wisdom cannot be cast even by them.

The new amendment to the Rules tries to shut out amendments which are supposed to be, or which are taken to be, merely verbal, grammatical, or formal. Verbal amendments, Sir, have been made often, not only by the other Members of this House, but also by the draftsmen themselves. If such a rule is to be in operation against only those who have not had the honour to belong to the Drafting Committee, but is not to be used against those who, after having drafted after very careful weighing of each phrase, after earnest consideration of the various articles and clauses of this Constitution, discover that they are not what the draftsmen actually intended them to convey, and try to alter words or make verbal amendments, it would hardly be fair, especially if non-official Members should not be at liberty to do so. This, in my opinion, would be so unjust and unparliamentary that I trust this House will not entertain such a proposition.

Sir, the other day I had the misfortune to suggest what looked like a merely verbal amendment, that is, to change the words, "all citizens" to "every citizen". Much to my surprise, I was happy to find that even the learned Dr. Ambedkar was able to see the justice of that suggestion, and made a promise that he would consider, and consider favourably, what looked like only a mere verbal change. On the other hand, an amendment which Dr. Ambedkar himself made to article 40 was also, unless one was able to see the arguments which he was pleased to advance in support of it, a verbal amendment. The idea remains substantially the same.

Verbal amendments of this kind, whatever the appearance, are suggested, not merely for the fun of producing a debate or for seeing one's name in the papers. Verbal amendments very often embody a difference in expression which is a difference of approach, if not also of the ideal behind. And though we may not all be authorities on English lexicography, we may nevertheless be able to indicate a difference in outlook and a difference in viewpoint, by a change of words, which is not necessarily to be discarded because we happen to be not gifted with the technical skill and the specialised knowledge and experience in legal draftsmanship.

In support of this view, I would further suggest, Sir, that there is ample power in the rules as they stand for the Chair to economise the time of the House, if this is the only reason why an attempt is now made to curtail freedom of speech and the freedom of debate in this House. I suggest that after all we are making a constitution which, we hope, will last for some years; and the attitude which I find so often in many exalted quarters, that after all, there is now full power with us to revise or change it, should not affect our outlook on this matter. It may be that we are not able to maintain the constitution which we draft now for a long period of years. We may have occasion,—circumstances may prove stronger than our desires,—to make changes, and the Constitution which we sit down to draft today may not last as long as we may desire. Nevertheless, I think it is not in the mind of any Member that the constitution which we draft today so solemnly and so seriously should be changed tomorrow, because by lack of foresight, by want of discussion, by the absence of light thrown upon all corners of it, so to say, we were unable to perceive at the right moment all that lurked in the wording of the Constitution, and suddenly we discovered that we had provided for that which was not intended.

Sir, lawyers are a very clever class of people. They necessarily have to be clever, because they are eminently parasitical; they live upon the quarrels, the misfortunes, and tragedies of mankind; and, therefore they would always

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find a way of re-discovering any interpretation, inventing a meaning, providing an outlook which perhaps the original authors of the Constitution never intended. This cannot, of course, be avoided, so long as the legal profession endures in the manner it endures today. But it may at least be safeguarded if we have proper discussion, if all angles of approach, all expressions of opinion are before this House, for it finally to judge in the matter, and take the best that appeals to its sense of fairness and propriety in the matter of the constitution.

Sir, I am unable to follow the reasoning which requires that we must expedite this constitution, and seeks the method of expediting in some such curtailment of the opportunities of debate of the members as we find in this amendment of the Rules. Sir, if you really desire to curtail the time spend upon this matter, I put it to you: why should we not meet twice a day or meet for a longer time, or sit during the summer? Or are we so soft, are we so intent upon comfort and enjoyment to ourselves, that we can only think of meeting in the most fashionable season, in a most comfortable room, most comfortable conditions, and eschew our duty, merely because in the heat of summer or in the midst of social engagements, we will not find it so convenient?

I put it to you, Sir, that if you lengthen the sittings, for instance, if you sit in the afternoons from 3 to 9, you will have a very good evidence as to how many Members ventilate their opinions. See to it, Sir, that you tax our energies properly. See to it Sir, that you make full demands on our enthusiasm, or desire to work for the country through this door; and you will find that only those who are willing to stand the strain will be present. The time will thus be effectively curtailed without any wastage, without any feeling that the minority, or those who may not have the favour of the majority, may be left out of their fair share in shaping this Constitution.

I put it to you, Sir, and to the whole House, that the one and only way to deal with this Constitution, deal with it properly, deal with it satisfactorily, deal with it so that the generations which come behind us may bless us for making it, is to provide proper time and not to curtail the time. If you desire to hurry—and I personally see no reason why we should hurry—you should meet longer, more often, why, even during the time when the Legislature is in session, which body can very well meet at night, and deal with those parts of the constitution which demand detailed knowledge, which require for full discussion not so many broad principles and occasions of declamation, but which necessitate earnest study and detailed knowledge of matters like finance, matters like judicial procedure, and so on.

I do not wish to take the time of the House by enumerating the many sections. Correct expression in each would require not merely a knowledge of English, not merely a mastery of punctuation, not merely appropriateness inform; it would require very much more detailed knowledge of the history and economics of this country, which I venture to think will not be served by your hurrying through the Constitution in the manner which seems to be fashionable and favoured by the majority today. In so doing, I do not think that the majority is serving the interests of the country, if they desire to curtail liberties of speech, if they desire to make rules or amend rules, which will diminish the opportunities we have of placing our views, our outlook, our angle of approach, before this House. Very often, Sir, when we draft amendments in the seclusion of our study, we have only one brain to go by. We come here and see the light of our fellows. When we come here and find other expressions, other angles of approach, are properly backed by facts or reason. I for my part, am quite prepared to say, I would have no hesitation, no shame in revising my own judgment and accepting the wiser judgment of

others. But that cannot be done if that judgment is placed before us without reason, and if it is not illustrated with some facts. If you shut out the means of approach, if you shut out, Sir, the very door of discussion, if you put amendments which are tabled here "without discussion" to vote, you will deny the most elementary right of freedom to speech to Members. But that would mean that you are backed by the brute majority behind you, and not the reasoning intelligentsia of the country with you.

Sir, I would like to put it from another angle. After all, you have very learned technical draftsmen at your service. Ask them, enquire of them, enquire even of this Chairman of the Drafting Committee itself whether other countries, who have had to make their constitution after larger experience than ourselves, have not also taken time over this matter of such vast importance for unborn generations as well as the present? Sir, the Government of India Act itself took several years to get through Parliament, a body which has much greater experience than we may have in making such enactments. The French people had after liberation devoted two years just to the making of the Constitution alone. The American people, when they became free and had only 13 few states with a population not even a hundredth of ours, took two years to pass the constitution, without reckoning all the wrangles that went on before the final Draft was settled from time to time, before they came to the United States, as it is now called.

Sir, I can give you innumerable examples where time has been taken and rightly taken. Why, the fundamental constitution of the country should be studied, should be considered, should be viewed from every angle before it is passed. And that will not be served, I repeat, Sir, by your hurrying through in this manner. If, therefore, it is open to me to move, I would certainly suggest that this matter be referred back to the Drafting Committee itself, or the Steering Committee of this House or whatever the appropriate body may be, to see to this matter. I am not against expediting, getting the constitution as rapidly passed as possible. I am against this being very hurriedly gone through; I am against its being gone through in a slip-shod manner, and that is why I suggest to you: Let us discover other ways like more time being devoted to it, and more space being devoted. Let us also remember that we are often reproached with getting our allowances, unearned. I, therefore, suggest, Sir, that the House will do well indeed, if instead of passing a motion like this today, which they can very well pass with a majority pledged to it, you will reconsider the matter, and bring it up again with such amendments in time and so on, if you find there is a desire for obstructiveness for its own sake. That would permit the fullest possible discussion, that would leave no room for anybody to feel that their expression was not fully placed before them and at the same time serve to make the Constitution full, complete and accurate, and much better than attempts like this would let it be. Thank you, Sir.

Prof. Shibban Lal Saksena (United Provinces: General): Mr. Vice-President, Sir, I had given notice of an amendment to the amendment No. 7 of Mr. Kamath; but it has been time-barred and so I will only explain my view point. I had wished that at the end of Mr. Kamath's amendment No. 7, the following words be added: "and clause (a) (3) be deleted."

I have carefully heard the speeches of my friends Mr. Damodar Swarup Seth and Professor K. T. Shah, and other friends. I feel that they are equally earnest about passing this Constitution with all the speed that is possible. At present, the way in which we are proceeding it has taken nine days to pass twenty articles. It comes to about two articles a day on the average. In the Constitution we have got 315 articles and eight Schedules, so that, normally, it should take at this rate about two hundred days to pass the whole Constitution.

[Prof. Shibban Lal Saksena]

This is the minimum time which I think will be required, because, we all know that during these nine days the Congress Party members have not been moving most of their amendments, and only a very few amendments are moved on their behalf. I do not think that things could be done quicker than they are being done now, and I do not think that there is any possibility of passing this Constitution unless we give at least 200 days for this purpose. There is only one way available to do it quicker and that is by increasing the time of our sittings. Even if we increase the time of the sittings from three hours to five it will take many days still. I personally feel that we are not wasting any time even now, for the time which is saved is used by the Congress Party in selecting the amendments, which amendments to move and which not to move, and in this way, that really saves the time of the House. I do not think there can be any method by which we can go at a quicker rate.

This particular motion of my friend Shrimati Durgabai supposes that some quicker progress is possible by this method; I personally feel that it will not serve this purpose. First of all, we have got Mr. Naziruddin Ahmad who has tabled many amendments of a formal nature; he himself is not moving most of them. Similarly, with regard to the second part of clause (3), which says that amendments which are over-lapping or of a similar import, shall not be moved, I feel that this is something very serious. There may be a number of amendments on a particular subject, and the House may be willing to accept one amendment and not the other selected by the Chair. Although it has been stated that they will be deemed to have been moved. I personally feel that it will not be proper to deem them to have been moved unless they are commended to the House by a speech by the mover. I feel that it would be undemocratic to deem amendments to have been moved without their being moved in the House.Though we are not really saving very great time of the House, we would be giving rise to a justified complaint on behalf of many Members that by this we are trying to gag them. I do not think they will be gagged because you will always allow those amendments which have substance in them to be moved. But, still, it could be complained by those who are opposed to the Congress that they are being hustled and gagged. Therefore, it is my earnest wish to commend to my friend Shrimati Durgabai to reconsider this motion and to see whether it is proper to press it, and whether the real purpose would be served by this motion. I feel very intensely that the Constitution is a permanent thing and as such there should not be any complaint that we are not properly considering it. I hope this motion will be reconsidered and that my remarks will be borne in mind by my friends.

Shri B. N. Munavalli (Bombay States): Mr. Vice-President, Sir, I am in entire agreement with the motion sofar as its substance is concerned; but in so far as it curtails the privileges and rights of individual Members of the House, I am constrained to oppose it.

Sir, we have been meeting here and discussing article by article, but we have not been discussing in vain. It is only on important points and important amendments that discussions are taking place. Some of the honourable Members have been wise enough, when they found that their amendments have no substance, to withdraw them. Under these circumstances, I think that by passing this motion, we will be laying down a very bad precedent for the other legislatures to follow. I therefore strongly oppose this motion and appeal to the House, that as a Sovereign Body, the precedents that we lay down are likely to be followed by other legislatures, if we pass this motion; it will be a bad precedent and honourable Members should oppose this motion.

Maulana Hasrat Mohani (United Provinces : Muslim): Sir, I must strongly oppose the motion put forward by Shrimati Durgabai. Even when our President has not got these extraordinary powers such as are suggested in the motion, by experience we have found, by seeing the proceedings of this House, it has given rise to so many misgivings, in the minds of ordinary Members of this House. I may explain what I am saying. I have got here a copy of two whips issued by the Congress Party meeting. Every day before the holding of the session of this House,.....

Mr. Vice-President : They are not supposed to be referred to here.

Maulana Hasrat Mohani : I want to say that everyday.....

Mr. Vice-President : Will you please stop referring to these Congress whips? They are not supposed to be documents to be used here.

Maulana Hasrat Mohani : What I find here is that it appears to be that whatever is decided there is being carried out here to the word. This gives rise to a misgiving on the part of ordinary Members, because it makes the whole thing to be a one-party business, or even I consider one man's show. If that is the case, if we give extraordinary powers to the President, I would be justified in asking the question, where is the use of holding this farce of a Constituent Assembly if it is to be a party business, I mean the business of the Congress Party, or an one man's show?

Shri Algu Rai Shastri (United Provinces : General): *[Mr. President, I thank Shrimati Durgabai for bringing forward a motion to expedite the passage of the Constitution and save our time. I do not agree with my friends who have opposed this motion. I think it is improper to say that the Constitution is being rushed through. We know that it is long since the Constituent Assembly was formed, that it has been given ample time to prepare the Constitution and that a Drafting Committee composed of able persons has been busy preparing this Draft Constitution. We had already accepted its fundamental principles, we had also accepted the Fundamental Rights embodied in the Draft constitution. It does not appear proper to move, at this stage, mere grammatical amendments seeking to insert "the" or to dot the `I's' or cross the t's in some places in the Draft Constitution. To move such amendments, I think, is sheer injustice to the people at whose expense the entire administrative machinery is functioning. We ought to save every pie and every minute.

I have listened to what my friend Seth Damodar Swarup has just said. Here in this House he says that there should be no hurry in considering the Draft Constitution; while outside the House I have heard these very friends say "The work of framing the Constitution is taking a considerable amount of time. God knows when it will be finalised and elections will be held under the new Constitution". It is necessary and in fact people are anxious that we should finalise the Constitution quickly and hold fresh elections on the basis of adult suffrage, in which every person of the age of twenty one years may exercise his vote and elect his real representative in order that the administration may be under the control of the real representatives of the people, and the administration may justly bear the name of a Popular Government. The present Constituent Assembly has been formed by means of indirect election. People holding views like my friend Seth Damodar Swarup even go to the length of saying that the present Constituent Assembly is a useless body and that it should be dissolved and the Draft Constitution prepared by it should be placed before a fresh Assembly elected on the basis of adult franchise. Seth Damodar Swarup and people of his way of thinking say all these things and at the same time they demand here more and more time for considering this Draft Constitution. The present suggestion, or I should say the motion before

*[ ] Translation of Hindustani speech.

[Shri Algu Rai Shastri]

the House, may perhaps require modification here and there, but the motion as a whole is a welcome one and I endorse whole-heartedly the object behind it. It confers power on the President to disallow amendments which seek to make merely verbal or grammatical changes—such as comma, semi-colon and such other things. The Drafting Committee itself may effect such changes. The Consultative Committee which sits every day or the other bodies that are there can effect such changes. I said in the very beginning that English is not our language but we have drafted the Constitution in that language. I am afraid we cannot easily detect any grammatical mistakes that might have been committed. It is unnecessary for me to remark that we are not well conversant with its phraseology and other niceties of idioms. A man from England may go on amending this draft throughout his life. We would like this Constitution in English to be repealed and substituted by a constitution written in our own language. It is for this reason that we are unable to make it as perfect as we would like. In so far as the question of improvement of the language of the Draft is concerned there is one difficulty. Pandit Nehru, Dr. Ambedkar and Shri K. M. Munshi are all brilliant masters of English language. But the style of each is marked with his individuality. It is evident that none of us is in a position to judge which of these brilliant styles is correct from the point of view of the English usage, and which words and idioms are appropriate and which are not. I believe the purpose and the meaning in view would be substantially conveyed whatever style we may agree to employ for our purposes. I therefore, submit that amendments aiming to improve the language of the Draft are entirely useless, and we should not waste our time in considering such amendments.

As regards the many amendments which are more or less similar in form or have the same object but have been tabled by different members, I would submit that the House should select one of these and consider it only. We can, I submit, depend in this respect on the discretion of Mr. President. If he declares an amendment to be an all embracing one, which, in his opinion, would enable us to improve the language of the Draft, that amendment may be taken up for consideration by the House. It is true that there must be opportunity for a full expression of opinion, but in my view it is not proper that there should be long-winded speeches or that the proceedings should be unnecessarily prolonged day after day.

I may, in this connection, draw your attention to what the people of India are already saying about us. If you travel in a 3rd class compartment of a railway train you would find what the people think about us, from the disparaging references to the electric fans, the pleasing light, and the other amenities provided to us while we are drawing up a constitution for them.

Shri K. T. Shah gave to us the instances of other countries which devoted two or even three years for framing their constitution. But may I ask how many years have been devoted by us to the same task? Till now, we have devoted two years to it. How is it then people still say that sufficient time has not been given to us to consider and pass our constitution? We must remember that each day we sit here involves an expenditure of thirteen to fourteen thousand rupees of public money—or it may be even twenty-four to twenty-five thousand rupees for all I know. This is the price the country is paying for each sitting of this House. It is plain that we cannot continue to put this heavy financial burden on the poor people of our country. It is well known that our people are not prosperous. We cannot, I submit, continue to tax the slender resources of our people in this manner for a mere idle discussion of the niceties of idioms and words.

One can appreciate, no doubt, the incurring of expenditure on experts or for the purpose of enabling Members of this House to introduce really thought-provoking amendments or to suggest new ideas. It is plain that in this respect there would not be what may be termed 'a gagging order' in this House. No one, I submit, is being stifled in this respect. I submit that the charge levelled here that the expression of opinion is being stifled and that decisions are being taken on the strength of a brute majority is without any substance. There is every opportunity for ample discussion. I submit that it is no use complaining and blaming the country for returning to this House a majority of members of a party whose numerous sacrifices for the people were in the people's minds at the time of elections and which really has the confidence and support of the vast majority of the nation. If we look at Russia we find that the Communist Party has absolute domination over the State. It also controls and carries on the administration. No one, I believe, can condemn the Communist party for this condemnation there can be only when a party begins to act unjustly. But if the party assembles to discuss questions, and if its members come to an unanimous agreement, and if it continues to serve the people, there is no occasion, I submit, for any complaint or criticism. There is complete freedom of expression; really valuable ideas come before us and thereby we are able to make progress in our affairs. The business of the House also is expedited by the party functioning in this manner, and I believe that the country also will be grateful to the party for acting in this manner.

In the circumstances I do not see on what ground people here grumble against this party practice. But even if they grumble, the people approve the practice of the party, discussing questions in its meetings so that its spokesmen may express their opinions in the House and so that the other Members of the party may not indulge in unnecessary speeches and the time of the House may be saved. I submit, that we would be involved in an unending affair and would not be able to make any progress towards the completion of our business, if we listen to those who wish to adopt delaying tactics and to be free to make changes in punctuation marks, as a comma here and a full stop there. In my opinion, such a course would be grossly unfair to our poor people. I believe it will not do to agree to the proposal that Members should be permitted to speak without any restriction or that there should not be a rule—what some Members here refer as 'Section 144'—for the regulation of the debate in the House.

May one enquire what ideas, what wonderful ideas, you are going to place before the House if you get unrestricted freedom of speech? It is clear that Members may move amendments only if these contain some new ideas or some new suggestions which would remove substantial defects in this Draft. I am sure that Mr. President would not prevent anyone here from moving such amendments for improving the Draft. In my opinion the motion which has been brought forward by Shrimati Durgabai only states that only one amendment—and the one which is the most comprehensive—out of several amendments having the same form and object but tabled by different Members, would be permitted to be moved, I believe, under this proposal, every one of those who gave notice of his intention to move any one of such amendments would have full freedom to place before the House any new suggestions he may have, while participating in the debate on the selected amendment. But no one would have freedom to indulge in mere repetition. Repetition is not allowed in any Parliament or Legislature or any where else. I repeat that in no country and in no parliament is there freedom to indulge in 'mere repetition'. There is no reason why this rule should not be enforced here. I, therefore, fully support the motion brought forward by Shrimati Durgabai and totally dissent from those who have opposed it.]

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I support the motion made by our friend Shrimati Durgabai. I am afraid Prof. K. T. Shah and other friends who have tabled amendments and who have spoken against this motion have unnecessarily created a panic though there is absolutely no cause for alarm. I am sure they would all agree with me and with the mover of the motion that on merely verbal, formal or grammatical changes, we should not spend much of our time. After all, the same idea can be put in various forms or various shapes endlessly. Are we to go on spending time upon them all? Of course, I agree with Prof. Shah that we should not hustle ourselves. But on important issues, power is given to the President to select such amendments as will cover in substance all the other amendments, and if one such amendment does not cover the substance, two or three or four amendments can be selected by him. We do not restrict his power in this direction at all. He can choose one or more amendments for the purpose of discussion.

Moreover, it is not as if all these amendments are ruled out once and for all. According to Rule 38-R. they are before the committee which will ultimately incorporate them so far as they are found useful, in substance or in improving the language and so on, when the Draft Constitution comes before us for final adoption. This rule that we are bringing in does not take away the efficacy of rule No. 38-R.

Moreover, this is not a novel procedure that we are bringing in. When the Irish Bill was before the House of Commons—and that is the Mother of Parliaments, and it never wants to hustle anybody—they had this rule in the House of Commons, that is Standing Order No. 28, and this present motion which has been placed before this House is copied, word for word, from the Standing Order No. 28 of the Mother of Parliaments. Therefore, it cannot be said that this will stifle discussion, and I am surprised that our friends should unnecessarily get alarmed about it.

Then, as regards substantial propositions, any number of such propositions can come up before us. The President can allow them, and others can be taken to have been moved. It is not as if they are thrown out. The President is not, under this rule, called upon to prevent discussion of important matters. As a matter of fact, he has been allowing them. All the amendments on a particular article are allowed to be moved and discussion is allowed on them and also on the main article. Under these circumstances, where is the necessity for any alarm?

So far as the Congress Party is concerned, it does go through all the amendments and find out what amendments should come up before the House. But with regard to the others, we have noticed how many amendments are being moved. We can spend 50 days or two months or three months on these discussions. But should there not be an end to it? It is true we should not stifle ourselves, but expedition also should be there. We have already spent two years. Of course the opinion of every Member here is absolutely necessary to shape the discussion and the decision of this House. But we all realise that none of us is here to waste time. That is understood by all. But each one of us should know what he should do in the interest of expedition, while at the same time not losing sight of the necessity for discussions on important issues. I would appeal to my friends not to work themselves into a panic regarding this rule which is intended merely to expedite matters, consistently with the efficiency of our discussions.

It has been suggested that we may have sittings both in the morning and in the evening, and if the House is willing, we can have this arrangement from next Monday. But that alone will not be helpful without this rule. I therefore submit that this rule, as proposed by Shrimati Durgabai, should be accepted by the House, without any amendment.

Shri H. V. Kamath : Sir, on a point of information. Is a copy of the Rules of Procedure of the House of Commons, or the particular rule referred to by Mr. Ayyangar before you? Otherwise, I would request him to supply a copy to you.

Mr. Vice-President : Yes, it is here.

Maulana Hasrat Mohani : Sir, may I know, on a point of information whether the particular rule referred to in the Rules of Procedure of the House of Commons relates to ordinary business or to the business of constitution making? I think as far as constitution making is concerned, nowhere in the world is such an obstacle introduced on free discussions.

Mr. Vice-President : Is the Member asking for information or supplying information?

Shrimati G. Durgabai : Mr. Vice-President, Sir, I do not think I should take up the time of the House any more, to answer the charges made against my motion, by some Members of this House. Already, my Honourable friend Mr. Ayyangar has taken the trouble to answer some of the points raised by those Members who opposed my motion. But I consider it necessary to answer one point. I have heard some Members say that this is quite an unusual procedure that we are adopting here. But I submit, there is nothing unusual about it. And just now one Member asked whether the procedure that we now adopt is used only with regard to ordinary Bills or with regard to the business of constitution making. Mr. Ayyangar has already said that the same procedure was adopted under Standing Order No. 28 of the House of Commons with regard to the passage of the Irish Home Rule Bill. Not only that. Even in connection with the passage of the Government of India Act 1935, the same procedure was adopted to expedite the work. There are various kinds of procedures designed to secure the quick disposal of work, and we thought that this one which we have suggested, is the least dangerous, and also the most acceptable to the Members of this House.Therefore, I ventured to bring this motion before you, expecting unanimous consent to its adoption. But all sorts of points have been raised and I have heard Members say that this rule would defeat the principle of democracy and also that it would shut the mouths of Members. I submit there is nothing of that kind in my motion. I have already explained that in moving this amendment, my object was not to curtail the privileges of members. If they would only go through my amendment carefully, they would never find fault with me because it is only discussion of such points which are merely verbal or grammatical that would be affected by this amendment. We have gone through the voluminous lists of amendments and found that many of them are of a merely verbal or grammatical nature. It is only these amendments that will be disallowed. Already rule 38-R is there under which the Drafting Committee can again go through these amendments and if necessary can incorporate them. Therefore all the discussion that has taken place against this amendment is unnecessary, and I appeal to the House to unhesitatingly accept this motion of mine. The President has made it clear that he will be very judicial in exercising his power, and in selecting amendments he will displease no one but please everyone.

Sir, I again appeal to the House to accept this motion.

Shri H. V. Kamath : Sir, my honourable Friend Mr. Ayyangar has sought to mislead the House by quoting rule 28 of the House of Commons. That rule supports amendment No. 16 that I have moved.

Shri M. Ananthasayanam Ayyangar : My friend cannot go on making another speech. If he does not accept it, let him not.

Shri H. V. Kamath : I will with your permission, Sir, read that rule 28.

"In respect of any motion or in respect of any Bill under consideration either in Committee of the whole House or on report Mr. Speaker or in Committee the Chairman of ways and means and the Deputy Chairman shall have power to select new clauses or amendments to be proposed, and may, if he thinks fit, call upon any member who has given notice of an amendment to give such explanation of the object of the amendment as may enable him to form his judgment upon it." I also want to incorporate it, that every member who has given notice of an amendment.....

Mr. Vice-President : That cannot be done now. But in order to prevent a heated discussion I will take the liberty of going outside my duties and pointing out that this sub-rule (3) does not prevent the President, if of course you have confidence in him to that extent, from making such a request to Members who have submitted amendments.

I shall now start taking votes on the amendments.

An Honourable Member : Does the President already have these powers?

Mr. Vice-President : If he had them there would be no sense in bringing forward this motion.

Mr. Vice-President : The question is:

That the proposed sub-rule (2) of rule 38-P be deleted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (2) of rule 38-P, after the words "President shall", the words "after hearing the member who has given notice of any amendment" be inserted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (2) of rule 38-P, for the words "shall have the power to" the word "may" be substituted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (2) of rule 38-P, for the word "amendments" the words "such amendments" be substituted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (2) of rule 38-P, the comma after the word "verbal" and the word "grammatical" be deleted.

The motion was negatived.

Mr. Vice President : The question is :

That in the proposed sub-rule (2) of rule 38-P, the words "and to remit them to the Drafting Committee" be added at the end.

The motion was negatived.

Mr. Vice-President : The question is:

That the proposed sub-rule (3) of rule 38-P be deleted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (3) of rule 38-P, for the words "shall also have the power to" the words "may, further," be substituted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (3) of rule 38-P, for the word "similar" the words "same or similar" be substituted.

The motion was negatived.

Mr. Vice-President : The question is:

That in the proposed sub-rule (3) of rule 38-P, for the word "may" wherever it occurs, the word "shall" be substituted.

The motion was negatived.

Shri Biswanath Das : Sir, I beg leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The question is:

That in the proposed sub-rule (3) of rule 38-P, after the words "without discussion" at the end, the following proviso be added:—

"Provided that a member whose amendment has not been so selected for consideration shall, if he so desires, be permitted by the President to state why his amendment should be considered."

The motion was negatived.

That after the proposed sub-rule (3) of rule 38-P, the following proviso be added:—

"Provided that before the President so selects any amendment, the member who has given notice of any amendment shall have the right to explain the nature and purport of his amendment."

The motion was negatived.

Mr. Vice-President : The question is:

"That the existing rule 38-P be renumbered as sub-rule(1) of rule 38-P, and to the said rule as so renumbered the following sub-rules be added:

(2) The President shall have the power to disallow amendments which seek to make merely verbal, grammatical or formal changes.

(3) The President shall also have the power to select for consideration and voting by the House the more appropriate or comprehensive amendment or amendments out of the amendments of similar import and any such amendment not so selected may, unless withdrawn, be deemed to have been moved and may be put to the vote without discussion."

The motion was adopted.

Mr. Vice-President : If I may say so, I would appeal to Members to make better use of their time.

Shrimati G. Durgabai : Sir, I move:

"That after Rule 38-V, the following new Rule be inserted:—

Definition.—38-W. In this Chapter (excepting in rules 38-U and 38-V thereof), the expression 'President' includes any person for the time being presiding over the Assembly."

The Honourable President of this House has delegated his powers to the Vice-President on his behalf to exercise all functions under Chapter VI-A of the Rules of Procedure, excepting in regard to Rules 38-U and 38-V. These two rules, I am sure the Honourable Members are aware, relate to authentication of Bills. Excluding these two Rules, the President now has delegated all other powers under Chapter VI-A to the Honourable Vice-President now presiding over the Assembly to exercise all functions on his behalf.

Since it has already taken place, it is considered essential to introduce this new rule and incorporate it in the Rules of the Procedure of this Assembly.

In short, that is the object of my motion. I hope that the House would find no difficulty in accepting it.

Sir, I move:

Mr. Vice-President : We shall now take up the amendments from 18 to 23.

Mr. Naziruddin Ahmad : Sir, I move:

"That the motion relating to the insertion of new rule 38-W be deleted."

By way of alternative amendment, I move:

"That for the motion relating to the insertion of new rule 38-W the following motion be substituted:—

(b) That after Rule 14, the following new Rule 14-A be inserted:—

Person Presiding to have Powers of President in Certain Cases

"14-A. The person presiding over the Assembly under rules 13 and 14 shall have all the powers of the President under Chapter V of these rules except under rules 38-U and 38-V."

Sir, I also move:

"That to the new rule 14-A, the following Explanation be added:—

'Explanation.—This rule shall have retrospective effect as if it was made on the 4th day of November, 1948.' "

Sir, I move:

"That in the proposed rule 38-W, for the words 'any person for the time being presiding over the Assembly' the words 'the Chairman' be substituted."

Sir, I move:

"That in the proposed rule 38-W, the following Explanation be added:—

'Explanation.—This rule shall have retrospective effect as if it was made on the 4th day of November 1948.' "

Before proceeding further, I want to make one point quite clear. I fully agree with the principle of this amendment and I fully support the principle. But I regret that I cannot accept it in the present form. It is, as I have already indicated, badly conceived and badly drafted, and I shall show how it is so.

Sir, the powers of the Vice-President are described in Rules 13 and 14. Rule 13 says that "in the absence of the President, the Vice-President, as the President may determine, shall preside over the Assembly." So in the absence of the President, you have been by special nomination or request been presiding over this Assembly.

Then Rule 14 says: "If the President is absent and there is no Vice-President present to preside over the Assembly, the Assembly may choose any member to perform the duties of the Chairman."

I find there has been a serious lacuna here and this has been rightly spotted by the Honourable Member, Shrimati Durgabai, namely, that the powers of the Vice-President have never been defined anywhere. It has never been stated anywhere that the Vice-President, beyond presiding shall have any powers of deciding matters according to rules. I should have submitted, as I have submitted before, that the provision giving power to the Honourable the Vice-President to preside, includes the power to give rulings, to declare the decisions of the House: and we have been doing that during the absence of the Honourable the permanent President on account of illness. Sir, if however, it is thought that the Honourable the Vice-President, beyond presiding, must according to the rules be deemed not to have any further powers, that he has to sit mute as a silent witness to what is happening in the House without being able to control the debate, to call any Member to order and may do this and may not do that as the presiding officer of the House, then I think one would be going too far. But supposing that is so, that beyond the power to preside you have no further power to act otherwise, that is, to give decisions of the House, give

rulings on points of order. If this is the lacuna, it has to be cured with effect from the date that you began to preside and not with effect from today. If there is a lacuna and it has to be remedied, then the remedy has to be given retrospective effect.

That is in short the effect of my amendment. In fact, I wish to give it retrospective effect: that is one great principle. I think the moment we are disposed to accept the principle of this amendment, retrospectivity follows as a necessary corollary. Then, Sir, the question is, where will you put it? Rules 13 and 14 indicate the powers of the Vice-President and, in the absence of the Vice-President, any person duly elected by the House to preside. I think this is the proper place to insert the provision. I suggest, therefore, that the place of the proposed new rule is after rule 14 as rule 14-A.

Then, supposing, for the sake of argument,—I have to guard against all possible cases—it is felt that the location should not be after rule 14, but exactly at the place where Shrimati Durgabai would place it, that is at 38(W), then retrospectivity must be given by means of amendment No. 23 by means of an explanation that this rule shall have retrospective effect, as if it was made on the 4th day of November, 1948. But 4th is not accurate. I have to put a day in anticipation because on the 4th day of November we began to sit, but you began to preside somewhat later. But if this date is changed from the date on which you began to preside over the House, this amendment should be made. I have taken it a little backward to obviate all objections. But if any objection is taken on the ground of this date I shall accept any amendment that may be suggested. The only reason for not putting the actual date was my ignorance thereof. I submit retrospective effect must be given. If there is no need to make the rule, everything is alright. But if this rule is adopted, then what will happen to the suspected illegality committed by you prior to this date and since you began to preside? I submit the rule is absolutely unnecessary or, in the alternative, it should be given retrospective effect either in rule 14-A or at the place suggested by Shrimati Durgabai with the explanation suggested in my amendment (No. 23). If the House is disposed to accept the amendment moved by Shrimati Durgabai, it should be inserted after the proposed rule 38-W. In any case the Explanation giving retrospectivity must be inserted either here or there.

Mr. Vice-President : The motion and the amendments are now open for discussion.

Shrimati G. Durgabai : Sir, I am sorry I cannot accept the amendments of my Honourable friend Mr. Naziruddin Ahmad, because we have to propose definition of the term 'the President' under the rules. What he said was that after rules 13 and 14, we should bring in 14-A. It has no place, because the term 'the Chairman' in two places has been defined as one presiding over the Assembly. But our purpose is not that. Under Chapter VI-A, the Vice-President has been given the power by the President. Therefore it is necessary to define the term there, and his amendment to bring this as 14-A, after 13-A does not fit in. Therefore I am sorry I cannot accept his amendment.

Mr. Vice-President : I shall now put the amendments, one by one, to vote.

Mr. Naziruddin Ahmad : I am prepared to accept the position as explained by Shrimati Durgabai. But no reply has been given to my arguments in support of amendment No. 23. Supposing we accept the amendment of Shrimati Durgabai, the Explanation would come as in amendment No. 23 in the amendment.

Shrimati G. Durgabai : Sir, I do not think amendment No. 23 is necessary. The explanation is quite unnecessary, because the powers of the President are already there, under delegation.

Mr. Vice-President : Being a negative motion, amendment No. 18 to delete new rule 38-W is out of order.

Mr. Naziruddin Ahmad : I beg leave to withdraw my amendments Nos. 19, 20 and 22.

Amendments Nos. 19, 20 and 22 were, by leave of the Assembly, withdrawn.

Mr. Vice-President : I shall now put amendment No. 23 to vote.

The question is:

"That in the proposed rule 38-W, the following Explanation be added:—

'Explanation.—This rule shall have retrospective effect as if it was made on the 4th day of November, 1948.' "

The motion was negatived.

Mr. Vice-President : I shall now put the new Rule 38-W to Vote.

The question is:

"That after Rule 38-V, the following new Rule be inserted:-

'Definition.—38-W. In this Chapter (excepting in rules 38-U and 38-V thereof), the expression `President' includes any person for the time being presiding over the Assembly.' "

The motion was adopted.

Article 8—contd.

Mr. Vice-President : We have a quarter of an hour more. We can resume discussion of article 8 of the Draft Constitution.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : We may adjourn now.

Mr. Vice-President : Our time is valuable. We should not waste a quarter of an hour.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for clause (3) of Article 8, the following be substituted:—

'(3) In this article—

(a) the expression 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India, or any part thereof;

(b) the expression 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repealed, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas."

Sir, the reason for bringing in this amendment is this: It will be noticed that in article 8 there are two expressions which occur. In sub-clause (1) of article 8, there occurs the phrase "laws in force", while in sub-clause(2) the words "any law" occur. In the original draft as submitted to this House, all that was done was to give the definition of the term "law" in sub-clause (3). The term "laws in force" was not defined. This amendment seeks to make good that lacuna. What we have done is to split sub-clause (3) into two parts (a) and (b), (a) contains the definition of the term "law" as embodied in the original sub-clause (3), and (b) gives the definition of the expression "laws in force" which occurs in sub-clause (1) of article 8. I do not think that any more explanation is necessary.

Mr. Mohd. Tahir (Bihar : Muslim) : Sir, I beg to move:

"That in clause (3) of article 8, for the words 'custom or usage' the words custom, usage or anything be substituted."

I do not want to make a long speech. I only want to say that the word "anything" will be more comprehensive if it is used after the word "usage". It is legal phraseology to say "custom, usage or anything having the force of law". Dr. Ambedkar has moved another amendment. If that amendment is accepted, I suggest that this amendment also may be accepted by the House With these words, I move.

Mr. Naziruddin Ahmad : Sir, before I move my amendment, I beg to point out that as a comprehensive amendment has been moved by the honourable Dr. Ambedkar, I think the present amendment should be suitably adapted to apply to that amendment. I wish to move the second part of it only.

Mr. Vice-President : First of all, find out whether he accepts it or not.

Mr. Naziruddin Ahmad : Unless I argue the matter, he will not accept it. I think, Sir, this amendment will have to be accepted.

I beg to move:

That in amendment No. 260 which has been moved by Dr. Ambedkar, the words "custom or usage having the force of law in the territory of India or any part thereof" be deleted.

Mr. Vice-President : How can you add to that amendment without giving notice? It is out of order. You can only make a suggestion.

Mr. Naziruddin Ahmad : I have already given notice of an amendment to the original article. In view of the amendment of Dr. Ambedkar, there should be consequential changes.

Mr. Vice-President : All right.

Mr. Naziruddin Ahmad : Sir, I hate to waste the time of the House, but I wish to ask the House to consider the absurdity that these words which I seek to delete will lead to. The absurdity is that in the first part of clause (3) we say that "law" includes "custom or usage having the force of law in the territory of India or any part thereof". Regarded apart from the context, this is absolutely unexceptionable. Law must be supposed to include "custom or usage having the force of law", but we must look to the application of the definition in the context. This must be read along with clause (2) of article 8. In clause (2) it is stated that "the State shall not make any law which takes away or abridges the rights conferred by this Part and any law made in contravention of this clause shall, to the extent of the contravention, be void". I respectfully draw the attention of the House to the word "make" in line I and to the word "made" in line 3 of sub-clause (2). Sir, you say that "the State shall not make any law" and also that "law includes custom or usage having the force of law". Therefore applying the explanation in clause 3(a) to clause (2), what is said is "the State shall not make any law, *i.e.,* 'make' "any custom or usage having the force of law". The point is that "custom or usage having the force of law" is not 'made' by anybody. It grows. "Custom" has been defined in the Oxford Dictionary as follows:—

"Custom means in law the usage which by continuance has acquired the force of law or right especially the special use of a locality, trade, society or the like."

Therefore in no sense a custom is made by the State. A custom is made usually by the people of a locality or a family or group or the like. It is made by continuance of an observance. Here you use the words "the State shall not make any law, *i.e.* custom or usage having the force of law". Even in independent India the State cannot have any hand in the making of a custom or usage having the force of law. I think these words should be deleted. These are the difficulties which beset me at every stage. I submit, Sir, that these words are not happy in the context and should be deleted.

The Honourable Shri B. G. Kher : (Bombay : General) : Sir, the wording is 'includes', not "means".

Mr. Naziruddin Ahmad : I am very glad for the kind interruption. It does not remove my difficulties at all. Does it mean to say that the State 'makes' a custom or usage? Still you have the difficulty to face that the State has to make a law including custom or usage.

The Honourable Shri B. G. Kher : Of course, it means 'whenever necessary' That is always understood in law. I am sorry to interrupt.

The Honourable Dr. B. R. Ambedkar : Probably he may not find it necessary to continue his speech if I refer to him this fact, namely, that the expression "law" in (3) (a) has reference to law in 8(1).

Mr. Naziruddin Ahmad : I am again grateful for the kind interruption of Dr. Ambedkar that the words 'custom and usage' have the force of law and so forth. This explanation applies also to clause (2), that is, the State shall not make any law. My remarks do not relate to article 8(1) but to 8(2). The difficulty is exactly where it was. I am not wiser, though happier for the kind interruption.

(Amendments Nos. 263 and 264 were not moved).

Mr. Vice-President : Article 8 is now open for general discussion.

Honourable Members : We should like to adjourn now.

Mr. Vice-President : As there seems to be a difference of opinion, the House stands adjourned till 10 o'clock tomorrow.

Shri Satyanarayan Sinha : (Bihar: General): We shall meet on Monday.

Mr. Vice-President : I should have thought that as we were very anxious to have the money of the country, we would also meet on Saturday. The House stands adjourned till 10 o'clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Monday, the 29th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 29*th November* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:

Shri Balwant Singh Mehta (United State of Rajasthan).

STATEMENT REGARDING FUTURE PROGRAMME

Mr. Vice-President (Dr. H. C. Mookherjee): Before we start discussion of article 8, which has not yet been put to the vote, I beg for leave to inform the House that at one time it was decided, of course informally, that we should meet tomorrow from 3 P.M. to 8 P.M., then a large number of Members represented to me that it would be inconvenient for various reasons. Therefore from tomorrow we shall meet at 9-30 A.M. and carry on till 1-30 P.M. That would give us four hours of work daily.

The second thing which I have to tell the House is that we shall meet up to the 13th of December and then break up, and reassemble on the 27th December. The exact time will be notified hereafter.

Article 8—(contd.)

Mr. Vice-President : Does any honourable Member wish to speak on article 8? If not, I should like to put it to vote.

Pandit Hirday Nath Kunzru (United Provinces : General): Sir, there is no quorum. I do not want to hold up the proceedings but in a House like this we cannot do anything at all consistently with the rules.

(The bells were rung.)

(There being no quorum.)

Mr. Vice-President : The House stands adjourned for a quarter of an hour.

The Assembly then adjourned till Twenty-five minutes past Ten of the Clock.

The Assembly reassembled at Twenty-five Minutes Past Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

Mr. Vice-President (Dr. H. C. Mookherjee): I understand there is another Member who has to sign the roll and take the pledge.

The following Member took the Pledge and signed the Register:—

Lt. Col. Dalel Singh (United State of Rajasthan).

STATEMENT *re* TIME OF MEETINGS

Mr. Vice-President : For the benefit of those Members who did not attend the House in time, I have to announce here again that from tomorrow we shall assemble at 9-30 A.M. and continue up to 1-30 P. M. and that we shall hold the last meeting of the current session on the 13th and reassemble on the 27th December. Our last day will be the 13th December and we shall reassemble on the 27th December; the exact time will be announced hereafter.

May I in all humility suggest that it is improper on the part of Members to be unpunctual in attending the House? We have lost 20 minutes in this way today and I do not know how we shall be able to explain it to the public *(Hear, hear)*.

Article 8—(contd.)

Mr. Vice-President : Shall we resume discussion of article 8? Is there any honourable Member who wishes to speak on it?

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. Vice-President, the amendment of Mr. Naziruddin Ahmad, I think, creates some difficulty which it is necessary to clear up. His amendment was intended to remove what he called an absurdity of the position which is created by the Draft as it stands. His argument, if I have understood it correctly, means this, that in the definition of law we have included custom, and having included custom, we also speak of the State not having the power to make any law. According to him, it means that the State would have the power to make custom, because according to our definition, law includes custom. I should have thought that that construction was not possible, for the simple reason that sub-clause (3) of article 8 applies to the whole of the article 8, and does not merely apply to sub-clause (2) of article 8. That being so, the only proper construction that one can put or it is possible to put would be to read the word 'Law' distributively, so that so far as article 8, sub-clause (1) was concerned, Law would include custom, while so-far as sub-clause (2) was concerned, 'Law' would not include custom. That would be, in my judgment, the proper reading, and if it was read that way, the absurdity to which my Friend referred would not arise.

But I can quite understand that a person who is not properly instructed in the rules of interpretation of Statute may put the construction which my Friend Mr. Naziruddin Ahmad is seeking to put, and therefore to avoid this difficulty, with your permission, I would suggest that in the amendment which I have moved to sub-clause (3) of article 8, I may be permitted to add the following words after the words "In this article". The words which I would like to add would be—

"Unless the context otherwise requires"

so that the article would read this way—

'In this article, unless the context otherwise requires—

(a) The expression 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;

(b) the expression……' "

I need not read the whole thing.

So, if the context in article 8(1) requires the term law to be used so as to include custom, that construction would be possible. If in sub-clause (2) of article 8, it is not necessary in the context to read the word law to include custom, it would not be possible to read the word 'law' to include custom. I think that would remove the difficulty which my Friend has pointed out in his amendment.

Mr. Vice-President : I shall put the amendments, one by one, to vote. I am referring to the numbering of the amendments in the old list.

I put amendment No. 252, standing in the name of Mr. Mahboob Ali Baig to vote. The question is:

"That the proviso to clause (2) of article 8 be deleted."

The amendment was adopted.

Mr. Vice-President : Then I put amendment No. 259, standing in the name of Shri Lokanath Misra. The question is:

"That after clause (2) of article 8, the following new clause be inserted and the existing clause (3) be renumbered as clause (4) :—

'(3) The Union or the State shall not undertake any legislation, or pass any law discriminatory to some community or communities or applicable to some particular community or communities and no other."

The amendment was negatived.

Mr. Vice-President : Then I put amendment No. 260, as amended by Dr. Ambedkar. The question is:

"That for clause (3) of article 8, the following be substituted:—

(3) In this article, unless the context otherwise requires,

(a) The expression 'law' includes any Ordinance, order, bye-law, rule, regulation, notification, custom, or usage having the force of law in the territory of India or any part thereof;

(b) the expression 'laws in force' includes laws passed or made by a Legislature or other competent authority in the territory of India before the commencement of this Constitution and not previously repeated, notwithstanding that any such law or any part thereof may not be then in operation either at all or in particular areas.' "

The amendment was adopted.

Mr. Vice-President : The question is:

"That in clause (3) of article (8) for the words 'custom or usage' the words 'custom, usage or anything' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is.

"That in clause (3) of article (8) for the words 'custom or usage having the force of law in the territory of India or any part thereof' be deleted."

The amendment was negatived.

An Honourable Member : May I know whether you are referring to the old or new list of amendments?

Mr. Vice-President : I was referring to the old list for the purpose of convenience. Henceforward we shall go according to the numbering in the new list, which was, I understand, distributed to honourable Members last evening.

The question is:

"That article 8, as amended, stand part of the Constitution."

The motion was adopted.

Article 8, as amended, was added to the Constitution.

Article 8-A

Pandit Balkrishna Sharma (United Provinces : General): There are some other amendments to article 8 in the form of inserting a new article 8-A.

Mr. Vice-President : Those are new articles which will be taken up presently.

Amendments Nos. 266 to 269 and 272 relate to language and script, which should stand over as that has been the decision of the House. I shall take up Amendment No. 270 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah (Bihar : General) : Sir, I beg to move:

"That after article 8, the following new article be added :—

'8-A. Unless the context otherwise requires, the Rights of Citizens herein defined in this Part of the Constitution shall be deemed to be the obligation of the State as representing the community collectively : and the obligations of the citizens shall be deemed to be the Rights of the State representing the community collectively.' "

Sir, I do not wish to waste the time of the House. May I point out that this amendment is in substance the same as was rejected by the House when it was considering the Directives. I think the old number was 848. In substance it amounts to the same thing. I can make out a case to show that it is slightly different, both in numbering and perhaps in intention, but as I have no desire to waste the time of the House, I would beg leave to withdraw this amendment, as it seeks to make rights and obligations of the State and citizen conversely obligations and rights.

Mr. Vice-President : Has the honourable Member the permission of the House to withdraw his amendment?

The amendment was, by leave of the Assembly, withdrawn.

Prof. K. T. Shah : Sir, if I may speak against myself, it seems to me, Amendment No. 271 on the List is somewhat out of order, because it is a mere recommendation to the Draftsman to insert a clause, rather than a specific amendment, or a clause itself. I do not wish to move it.

Mr. Vice-President : The next amendment is No. 273 in the new list in the name of Mr. L. N. Misra.

Shri Lokanath Misra (Orissa : General): Sir, I beg to move:

"That after article 8, the following new article 8-A be inserted :—

'RIGHT OF SUFFRAGE AND ELECTION

8-A. (1) Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.,* non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause but they may be indirect, *i.e.,* the Poura and Grama Panchayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall be required to elect primary members, who in their turn, shall elect members to the Union Parliament and to the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected to the Parliament or the Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate will be elected by the People and even if there is no rival, no candidate shall be elected unless he gets at least 1/3 of the total votes.' "

Sir, in moving this new article I have in mind the elections that are to come on the basis of adult suffrage. As a worker in the villages and as a man knowing his own people I beg to submit that this new article I propose will give real prestige and meaning to adult suffrage and democracy. I would submit that although I am not yet a man who would carry weight in the House, in the name of democracy, democracy of the intelligent will, we must frame our election rules for adult suffrage in such a manner that we will not reduce democracy to ridicule or adult suffrage to a sham. The first paragraph and the first sentence of the 2nd paragraph of this new article I propose are just reproduction of articles 67(6) and 149(2). Therefore I need not say much about this.

Paragraph (2) is very important and we have almost decided that the next elections or the future elections shall be on the basis of adult suffrage. It means that every citizen who is not otherwise disqualified under the statute and is 21 years of age or more shall be entitled to be a voter, and will elect members to the Union Parliament or the State Assemblies. This is a great aspiration, but we know our people. They are simple, they are good. But they are not as clever or as intelligent as the diplomats or the members that will be coming to represent them in the many Houses. While granting adult suffrage we must save it and shape it by making such an arrangement that every adult who is entitled to be a voter will be in a position to choose his representative intelligently and correctly. Not only that; having chosen his representative intelligently and correctly, he will be in a position every moment to assess what his representative does in the many Houses, either at the Centre or in the States. You will see from the Draft Constitution that for every 750,000 persons we will have one representative in the Union Parliament. I beg to submit that that is too big a number, and unless we do not mean what we say, it will be difficult for one member to educate those 750,000 people, to do them any good, to serve them, to know their mind, and having known their mind to come to the House and represent their grievances and do whatever is possible for them. I therefore submit that adult suffrage should be indirect—indirect in the sense that having decided the constituencies which, let us say, will be a region consisting of about 750,000 voters, we will divide that constituency into local self-governing units and these units will be required to elect their primary members. Suppose we have 750,000 people. Granting that every village or self-governing unit has about 1,000 voters, we will have about 750 units. Suppose every unit has a panchayat whose number might be three or five, we will have 750 x 5, that is, about 3,750 primary members. And those 3,750 primary members will be required to elect their representative either to the Union Parliament or to the State Assembly. If that happens it will be quite good because those 750,000 people will be electing their primary members to a strength of 3,750, and those 3,750 members will use their discretion and they will know the man they will be selecting as their representative. That will be a healthy and real process of election. If that is not going to be done, we all know what happens and therefore will happen in elections. We may raise a dust; we may make a hue and cry; raise slogans and mesmerise. In a day or two in course of one month in five years we will be lecturing, speaking and raising the emotions of people and asking them for party devotion. The result will be that only for a month in five years people will be in terrifying touch with the political busy-bodies. We would be giving them hopes and those hopes will dash down and evaporate as soon as the elections are over. That will not be a desirable real thing. If we really mean that adult suffrage will be educating the people and elections will be an instructive process, we can have no other way of achieving our object than by dividing the constituencies into local self-governing units—manageable units. Those units will be in close touch with the representatives and the representatives will be in touch with the units, and there will result a real process of instruction, advice and guidance. I beg to submit that it has been a great shame that democracy works in the name of the people, but the

[Shri Lokanath Misra]

people are nowhere in the picture. For men are little and their capacity cannot transcend their limited experience or grow except by continuous building upon their historic and traditional past. They can control great affairs only by acting together in the country and controlling small affairs and finding through experience men whom they can entrust with larger decisions. This is how they can talk rationally for themselves. Democracy can work only if each state is made up of a host of little democracies and rests, not on isolated individuals however great, but on groups small enough to express the spirit of neighbourhood and personal acquaintance. I hope I need not speak much about that. This great House, this learned House, this responsible House knows and can picture the state of things that will happen when there will be adult suffrage. It is a vast thing without yet any plan or arrangement. By that we may get some party strength, but we cannot educate the people and give them the strength and the authority that they really possess or ought to possess.

Coming to (3)—primary members shall have the right to recall the member they elected to the Parliament or the Assembly of the State—this is a very real fundamental right. We know that when we are returned to the Assemblies we come there as representing the masses for five years. But what we care for is the party caucus—the high command—and if it is pleased we are all right. We do not care for the people. I therefore submit that if we are to be real members representing the people, our first concern should be the people. They must be our masters. If we serve them well we are there; if we do not we must go out. But that does not happen now. Therefore it is essential that if people have a right to elect members they must have the right to recall them if things go wrong. The right to recall is a fundamental right in democracy. Unless we have that we cannot have proper democracy. I therefore submit to you that if we are going to give the people a right to elect their representatives who will rule in their name, we must at the same time give them the right to recall the representative if things go wrong. In fact what happens here is, we do not care for the people; there is somebody high up and he selects people. He says so and so must be elected and it is done. Therefore the selected person's primary business is to look up and not down. It is a bad state of democracy and I say we must stop it.

Then regarding (4),—a voter shall have the right to election and the cost of election shall be met by the State—I say so, because to come to the Assembly is not a profession or a profiteering business. If that is the concern of the State and if a person who comes to the Assembly comes to serve the people, it is necessary that the State must see that his election expenses are borne by the State. Otherwise some landlords and some capitalists will build up a party to set up candidates and those candidates will be returned. Let us say here is a poor man, a good worker, an honest man; but he has neither the money nor the party backing. The result is he cannot stand for election. If he stands he comes to ridicule. If you say that the election is as much in the interest of the State as the President or the Ministers or the bureaucracy, you must say that in the same manner as they are brought to being, legislative members should also come to the Assembly, the State bearing their election expenditure in a regulated and therefore in the least expensive and most organized manner. This may be laughable, but this is just and fair and unless we make such a provision no sincere, honest and real worker can be returned at least for the next fifteen or twenty years. If we do not do so now, we invite only revolution. And revolution will make everything topsy-turvy. It will have to be done, then by the fire of the people instead of our intelligent understanding, if we close it now. Therefore the cost of the elections must legitimately and in fairness to the cause be borne by the State because election as such is a State affair and is not a private

concern. It need not stagger us now. We must not allow members to come calculating profit and loss, calculating how much money they will be making in five years and therefore how much they may beg, borrow or steal for this parliamentary investment.

Mr. Vice-President : Mr. Misra, I must now ask you to stop because you have had two instalments.

Shri Lokanath Misra : All right, Sir.

Shri Algu Rai Shastri (United Provinces: General): *[Mr. President, I rise to oppose the amendment moved by my Friend. My first reason for doing so is that it has no relation to the question raised here. Matters relating to elections have been dealt with in the Draft Constitution at other places where it has been stated as to how the legislature shall be formed, who shall be the members of the legislatures; what shall be their rights; what shall be the procedure of their elections. Amendments of this nature may be moved in the article dealing with such things. This amendment is totally irrelevant to Fundamental Rights of the Draft Constitution. This is my first reason. Moreover, my Friend proposes therein that the State should incur the expenses of election for all the candidates seeking election. He says that seeking election to any Legislative is not a business proposition for any candidate. Consequently it is very necessary that the State should bear the election expenses. My worthy Friend has forgotten the fact that if the State begins to practice this generosity every one whose name may appear on the electoral roll and who may be eligible for election will seek election—if not for any other reason, at least for the fun of it. No state in the world can hope to remain financially solvent if it adopts the practice of bearing the election expenses of the candidates. As there would be no financial risk involved in seeking election, for the State would be bearing them all, and as every one would have the freedom to seek election, I am afraid that every one would try his luck especially when he would not be losing anything in particular by being defeated at the polls. It is very improper to move an amendment that contains such a proposal or to support it enthusiastically on the ground that it is very important and ensures democracy and smooth functioning of the Government. This amendment should be rejected outright and should never be accepted.]

The Honourable Dr. B. R. Ambedkar : I cannot accept this amendment.

Mr. Vice-President : The question is:

"That after article 8, the following new article 8-A be inserted :—

'RIGHT OF SUFFRAGE AND ELECTION

8-A. (1) Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution or any law made by the Union Parliament or by the Legislature of his State on any ground, *e.g.,* non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections.

(2) The elections shall be on the basis of adult suffrage as described in the next preceding sub-clause but they may be indirect, *i.e.,* the Poura and Grama Panchayats or a group of villages, a township or a part of it having a particular number of voters or being an autonomous unit of local self-government shall be required to elect primary members, who in their turn, shall elect members to the Union Parliament and to the State Assembly.

(3) The Primary Members shall have the right to recall the member they elected to the Parliament or the Assembly of the State.

(4) A voter shall have the right to election and the cost of election shall be met by the State.

(5) Every candidate must be elected by the People and even if there is no rival, no candidate shall be elected unless he gets at least 1/3 of the total votes."

The motion was negatived.

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* [ ] Translation of Hindustani speech.

Article 9

Mr. Vice-President : The motion before the House is:

that article 9 form part of the Constitution.

Shri C. Subramaniam (Madras : General) : Sir, I move:

"That the second para. of clause (1) of Article 9 be numbered as new clause (1a), and the words 'In particular' in the new clause so formed, be deleted."

The reason for the amendment is this: article 9 as it stands is a little bit misleading. 9(1) says: "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them". Then it says: "In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainments, or.....".

It would look as if, after a general clause saying that the State shall not discriminate, we give instances wherein the State shall not discriminate by using the words 'In particular'. As a matter of fact it is not so. After the words 'In particular' that clause refers to access to shops, etc. That is not a case where the State has the power to discriminate. Therefore it should read as a separate clause. That is why I have suggested that the words 'In particular' should be removed and it should form a separate clause as 9(1a) thus: "No citizen shall, on grounds only of religion, race, caste, sex or any of them be subject to any disability,.....".

Mr. Vice-President : The Member who has given notice of amendment No. 276 may now move the second part of it, *viz.,* to insert the words "discrimination" and "and public worship" after the words 'liability' and 'public resort' respectively.

(The amendment was not moved.)

Mr. Vice-President : The next two, (277 and 278) are verbal amendments and are therefore disallowed. The words "class or community" are, in my opinion, not necessary. These are implied in the word 'religion'.

Amendment No. 282 standing in the name of Shri Prabhu Dayal Himatsingka is a comprehensive amendment and may now be moved.

As the Member is absent, Syed Abdur Rouf may move amendment No. 280.

Syed Abdur Rouf (Assam : Muslim): I move, Sir:

"That in Article 9, after the word 'sex' wherever it occurs, the words 'place of birth' be inserted."

The intention of this article is to prohibit discrimination against citizens. We have prohibited discrimination on grounds of 'religion, race, caste or sex'. But I am afraid, Sir, the evil elements who might attempt to make discrimination against citizens will do so not on the ground of religion, race, caste or sex. To attempt to make discrimination on grounds of religion will be too frontal an attack for anybody to dare. As for caste, the same argument applies. As for "sex", I do not think that in the middle of the twentieth century there will be anybody attempting to make any discrimination on that ground. What was possible in bygone days is not possible now. Now, let us examine whether the word "race" can save the situation. Race has got a very comprehensive meaning

and applies in cases like the Aryan race, the Dravidian race, the Mongolian race, etc. If anybody wants to make any discrimination on the ground that a particular gentleman belongs to a particular province, the word "race" cannot stand in his way. In my opinion attempts may be made to make discrimination against citizens on ground of place of birth and that under the guise of local patriotism. To guard against this possibility, I have brought in this amendment and I hope that it will be accepted.

Mr. Vice-President : I will not allow amendment No. 279 to be moved but it will be put to the vote. We next come to amendment No. 281. I regard this amendment as merely verbal and therefore over-rule it. Then we come to amendments Nos. 283 and 285. Amendment No. 283 may be moved. Professor K. T. Shah.

Prof. K. T. Shah : It is more or less the same as the one moved recently and I do not wish to waste the time of the House by further remarks.

(Amendments Nos. 284, 285, the latter part of 288, and No. 291 were not moved.)

Mr. Vice-President : Then we come to amendment No. 286, first part. This is merely a verbal amendment and therefore it is disallowed. I need hardly point out that the word "creed" is unnecessary in view of the more comprehensive word "religion". Then we come to amendment No. 286, second part. Amendments Nos. 293 to 301, 304, 305, 306 and 308, are all amendments of similar import and therefore are to be considered together. It seems to me that amendment No. 293 standing in the name of Professor K. T. Shah is the most comprehensive.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 9, for sub-clauses (a) and (b) the following be substituted :—

'any place of public use or resort, maintained wholly or partly out of the revenues of the State, or in any way aided, recognised, encouraged or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, temples, hospitals, hotels and restaurants, places of public entertainment, recreation or amusement, like theaters and cinema-houses or concert-halls; public parks, gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services; and the like.' "

Sir, in seeking to move this amendment, I am not merely trying to give a list of places of public use or resort, or those dedicated to public service, from which in the past discrimination has been made and individuals of particular communities or classes have been excluded for no other reason except their caste or birth. In a Constitution founded upon the democratic equality of all citizens, I think it would be absurd, it would be wholly out of place, to allow any such discrimination being made. All places, therefore, which are either wholly or partly maintained out of public funds, or in any way encouraged, supported or protected by the State, should be accessible, I suggest, in equal measure to all citizens irrespective of caste, sex, birth, etc.

Clearly this is the intention of the article, and I am only seeking to expand and express it more clearly than has been done in the wording of the article as it stands. It is the more so as, in later articles, there seems to have been some exceptions introduced which might permit denominational, sectarian, or communal institutions not only to flourish; but to flourish at the cost of the public. I think it would be a very vicious principle if we tolerate this kind of exclusiveness which would be a blot on real democracy. If you mean definitely and clearly that there shall not be any sectarian or denominational exclusiveness; if you mean definitely and clearly that places of such utility as schools, or hospitals or asylums shall not be reserved for any reason for the members of a given sect or community, then I think it is not too much to demand that these should be made open and accessible to all citizens of this country. And because we have

[Prof. K. T. Shah]

had in the past very distressing experience of, let us say, wells not being allowed to be used by members of a particular class, or canals not being allowed to be used except on certain occasions or under certain conditions, and still more so, schools, hospitals and other places of this kind which are of very urgent public necessity, I think it would be not acting up to the ideals of this Constitution if there is not perfect and real equality amongst the citizens of this country.

The excuse is often made that a given institution is maintained, or at least initially founded, by some donations of a munificent member of a given community, and that in his original deed of trust setting up the institution and providing the funds, he makes it a condition that only members of a given community or members of a given caste or sub-caste are to be admitted to the benefit of such an institution. I think it is a lack of civic sense, and evidently against the idea of equality of citizenship, that such institutions were maintained exclusively or predominantly for certain communities.

In the past, when the Government of the country was in the hands of an alien race, and that race itself was deliberately making exclusion against the children of the soil a common feature of this policy for holding this country by maintaining clubs, hospitals, schools and other such places for their own compatriots so to say, there could be some understanding why their example might be followed also by those, at any rate, who imitated them in most respects. But now that principle,—the cause of all exclusiveness, is no more in this country, now that we are directly recognising and founding our constitution on the equality of all citizens, I submit that to introduce or permit exclusiveness in any way, whether directly stated or through a provision like this included in the Constitution, will make for a tendency of exclusiveness which should be reprobated by us, and should be therefore disallowed.

Our Constitution should make it expressly clear that all citizens being equal, their public institutions, and places of public resort, etc., which I have mentioned in my amendment, should be quite open, and must be open, to all those who are citizens of the country. There may be, it is possible, some claim that any particular class or community bears the cost of maintenance, if not wholly, at least in part, on its own shoulders. I have tried to make the amendment so far comprehensive that, even where an institution of this kind, or a place of public resort of this kind, is founded exclusively and maintained entirely by the donation of any particular individual, if it receives any public recognition, protection, safeguard, or encouragement of any kind, from a public authority, it would come within the scope of this article and as such would be made accessible to all equally.

I do not think that in any such provision, there would be any injustice to any vested interests, not only because from its very start such a vested interest would be regarded as objectionable in my eyes. It would be open to such munificent founders without losing so to say their cheap and easy method of securing immortality for themselves, to widen the terms of that trust, if the trust deed stands in the way, and make it possible for all to enjoy the benefits or advantages of such an institution equally.

We have had in every city in India, such exclusive institutions devoted to a sect. Recently we had a distressing spectacle of a public hospital in Bombay, not being accessible to any other community than that of the founder, which raised a considerable agitation in certain quarters. The refusal of the use of that hospital was openly defended on the ground that the foundation was a particular class foundation expressly so stated, and as such not available for use to members of other communities.

I think examples like this can be quoted without number from the experience of any place of considerable population in this country. But the fact that such examples do occur, and that such experience is within the memory and recollection of almost every member of this House, is in itself the strongest argument for us to accept this amendment of mine, and make it impossible hereafter to authorize any person or any community or class to say that given institution, whether schools, temples, hospitals, theatres, restaurants or what not shall be exclusively reserved for their benefit, if in the slightest degree it receives financial help or assistance or encouragement or safeguard from the State. I hope the amendment will commend itself to the House and the principle of it will be incorporated in the Constitution.

(Amendments No. 38 of List I, Nos. 294, 295, 296, 297, 298, 300, 301, 304, 305, 306, 308, and 287 were not moved.)

Mr. Vice-President : Amendment No. 288 standing in the name of Mr. Naziruddin Ahmad consists of three separate amendments. The first amendment is merely verbal and is therefore disallowed. The second and third are the same as amendments Nos. 278 and 284. I am therefore not allowing these also.

(Amendments Nos. 292 and 302 were not moved.)

Shri Guptanath Singh (Bihar: General): Sir, I have not come here to compete with my honourable Friends who table and move irrelevant and useless amendments, but I have come here to make.....

Shri H. V. Kamath (C. P. and Berar : General): Mr. Vice-President, is the honourable Member in order in making such a statement in this House?

Mr. Vice-President : I think you had better go on with your speech.

Shri Guptanath Singh : I have come, Sir, to move this little amendment to make the article comprehensive. So, Sir, with your permission, I beg to move:

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the words 'wells, tanks,' the words 'bathing ghats' be inserted."

I have deleted the word: 'kunds' from the original amendment and I only want that "bathing ghats" should be included here:

(Amendment No. 307 was not moved.)

Mr. Vice-President : Amendment Numbers 309 and 322 are the same. Amendment No. 322 is more comprehensive. I shall allow that amendment to be moved at the proper time.

Then, Amendment Nos. 310, 312, 320 and 321 are of similar import. Of these I think Amendment No. 310 is the most comprehensive one.

(Amendment Nos. 310, 312, 320 and 321 were not moved.)

Mr. Vice-President : So, these amendments go. Then, we take up Amendment No. 311.

(Amendment No. 311 was not moved.)

Mr. Vice-President : Amendment No. 313 is disallowed as being verbal. Amendment No. 314. Dr. Ambedkar.

Shri H. V. Kamath : Mr. Vice-President, Sir, may I ask whether this is merely a verbal or at best a formal amendment liable to be disallowed? It merely seeks to substitute the words 'State funds' in place of the words 'the revenues of the State'.

Mr. Vice-President : I shall keep that in mind. Dr. Ambedkar, will you please deal with that point also?

The Honourable Dr. B. R. Ambedkar : Sir, I move:

[The Honourable Dr. B. R. Ambedkar]

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the words 'the revenues of the State' the words 'State funds' be substituted."

The reason why the Drafting Committee felt that the words "the revenues of the State" should be replaced by the words "State funds" is a very simple thing. In the administrative parlance which has been in vogue in India for a considerably long time, we are accustomed to speak of revenues of a Provincial Government or revenues of the Central Government. When we come to speak of local boards or district boards, we generally use the phrase local funds and not revenues. That is the terminology which has been in operation throughout India in all the provinces. Now, the honourable members of the House will remember that we are using the word 'State' in this Part to include not only the Central Government and the Provincial Governments and Indian States, but also local authorities, such as district local boards or taluka local boards or the Port Trust authorities. So far as they are concerned, the proper word is 'Fund'. It is therefore desirable, in view of the fact that we are making these Fundamental Rights obligatory not merely upon the Central Government and the Provincial Governments, but also upon the district local boards and taluka local boards, to use a wider phraseology which would be applicable not only to the Central Government, but also to the local boards which are included in the definition of the word 'State'. I hope that my honourable Friend Mr. Kamath will now understand that the amendment which I have moved is not merely verbal, but has some substance in it.

Sir, I move.

Mr. Vice-President : There is an amendment to Amendment No. 314. That is Amendment No. 40 in List I standing in the name of Pandit Thakur Das Bhargava. He is not here. Therefore, I need not discuss the relevancy or otherwise of this particular amendment. The next one is Amendment No. 41 in List I, in the name of Shri Phool Singh. He is also absent. We now pass on to Amendment No. 315 standing in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir (Bihar : Muslim): Sir, with your permission, I want to bring to your notice that I had one Amendment No. 286. We have not decided anything about that amendment. Of course, the first part has been disallowed; the second part still remains.

Mr. Vice-President : I said that that will be put to the vote. Now, I cannot allow you to speak on that. If I make an exception in your favour, everybody else would claim the same right.

But, I think I have to make one point clear. This does not preclude the honourable Member from speaking on his Amendment No. 286 if he gets a chance to speak while participating in the general discussion.

Mr. Mohd. Tahir : Sir, I beg to move :

"That in sub-clause (b) of clause (1) of article 9, for the words 'State or dedicated to the use of the general public' the words 'State or any local authority or dedicated to the use of the general public and any contravention of this provision shall be an offence punishable in accordance with law' be substituted."

Sir, in moving this amendment I submit that so far as the first part of my amendment is concerned, *viz.*, the addition of 'local authority,' I do not press because the definition which has been given of 'State' includes local authority as well and therefore I do not press it. But so far as the penal clause is concerned, I will submit a few words and I will press it. Sir, in fact this article in our Constitution gives us a lesson that we should realise the equality of human beings as such and therefore it is necessary that some penal clause should be added in

this article. For your information I may bring it to your notice and to the notice of the House as well that in certain parts of our country as we know there are roads through which the people of scheduled castes and other low castes are not allowed to walk. In certain parts of our country we have found that if a scheduled caste man goes to draw water from the well, he immediately meets with his death. These are the sentiments which are working in the minds of certain sections of our country and therefore if we are really sincere that we are going to give relief to those who have been disregarded so long, then I submit that this penal clause must be added in this article. In view of this I hope that the whole House will agree, if at all they are sincere to give this relief to the general people, to add this penal clause and accept my amendment as such. With these few words, I move.

Mr. Vice-President : Amendments Nos. 316 to 319 not moved. No. 323 Prof. K. T. Shah.

Prof. K. T. Shah: Sir, I beg to move:

"That at the end of clause (2) of article 9, the following be added:—

'or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment'."

The clause, as it is, stands thus:—

"Nothing in this article shall prevent the State from making any special provision for women and children."

Sir, it must be distinguished from the preceding article. I read it, at any rate, that this is a provision for discrimination in favour of women and children, to which I have added the Scheduled Castes or backward tribes. This discrimination is in favour of particular classes of our society which, owing to an unfortunate legacy of the past, suffer from disabilities or handicaps. Those, I think, may require special treatment; and if they do require it, they should be permitted special facilities for some time so that real equality of citizens be established.

The rage for equality which has led to provide equal citizenship and equal rights for women has sometimes found exception in regard to special provisions that, in the long range, in the interest of the country or of the race, exclude women from certain dangerous occupations, certain types of work. That, I take it, is not intended in any way to diminish their civic equality or status as citizens. It is only intended to safeguard, protect or lead to their betterment in general; so that the long-range interests of the country may not suffer.

In regard to the scheduled castes and backward tribes, it is an open secret that they have been neglected in the past; and their rights and claims to enjoy and have the capacity to enjoy as equal citizens happens to be denied to them because of their backwardness. I seek therefore by this motion to include them also within the scope of this sub-clause (2), so that any special discrimination in favour of them may not be regarded as violating the basic principles of equality for all classes of citizens in the country. They need and must be given, for some time to come at any rate, special treatment in regard to education, in regard to opportunity for employment, and in many other cases where their present inequality, their present backwardness is only a hindrance to the rapid development of the country.

Any section of the community which is backward must necessarily impede the progress of the rest; and it is only in the interest of the community itself, therefore, that it is but right and proper we should provide facilities so that they may be brought up-to-date so to say and the uniform progress of all be forwarded.

I have, of course, not included in my amendment the length of years, the term of years for which some such special treatment may be given. That may

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be determined by the circumstances of the day. I only want to draw your attention to the fact that there are classes of our citizens who may need through no fault of theirs, some special treatment if equality is not to be equality of name only or on paper only, but equality of fact. I trust this will commend itself to the House and the amendment will be accepted.

Mr. Vice-President : Now the article is open for general discussion. I call upon Mr. Raj Bahadur of Matsya Union to speak.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, as you announced to-day in this House that amendments Nos. 280, 282 and 279 would be taken up for discussion, I studied them again and a new meaning, which did not occur to me previously, disclosed itself to me. In amendment No. 280 which was moved by my Friend Syed Abdur Rouf, the words used are "place of birth", whereas in the amendment that was to be moved by Mr. Prabhu Dayal, the word 'descent' also occurs. It is unfortunate that that amendment of Mr. Prabhu Dayal has not been moved. Even so, when we study the article we observe that whereas discrimination is sought to be eliminated on other grounds, nothing has been said about the discrimination on the basis of descent, on the basis of privileges enjoyed by some on account of their dynastic or family status. I, therefore, suggested an amendment to amendment No. 280, to the effect that the words "place of" be deleted, from the words sought to be inserted in the article by the amendment No. 280. It is clear that the words "place of" occurring before the word "birth" have restricted and limited the meaning of the whole Amendment to the "place of residence" only. Therefore, if the words "place of" are deleted, we may achieve a double objective. Firstly that the word 'birth' when it occurs in the context of the whole article would imply not only residence, but also "descent", and as such the purpose which was contemplated by the mover of the amendment 282 shall be satisfied.

Mr. Vice-President : I said this would be a general discussion but you are putting forward your amendments; I can hardly allow that. You can speak upon the whole clause and incidentally refer to your amendment. Kindly excuse me if I ask you to carry out my wish and speak on the article generally.

Shri Raj Bahadur : Yes, Sir. What occurs to me is this. We have seen it in the past and even at present, in the matter of distribution of offices and appointments in the State or in the matter of rights and privileges enjoyed on the basis of property etc., that there has been some discrimination on account of "descent"; on account of dynasty or family status as also on account of factors of an allied nature. It is my humble submission that when we are here to forge our constitution, we should eliminate all sorts of distinctions arising on the basis not only of religion, caste, sex etc. but also on the basis of family and descent. While I agree that the purpose and the idea that is covered by amendment No. 280 is necessary, I would also suggest that something must be put in this article which may obviate all possibilities of, and eliminate all chances of discrimination, favouritism, or nepotism, on the basis of birth or descent. It is common experience, rather it is a kind of grievance with most of us that in the distribution of offices and appointments of the State and also in the services, some discrimination is observed on the basis of birth and descent. We see it in the recruitment to the Air Force, and to some extent in the Army or elsewhere in the services of the Government. It is a grievance with us that people who are better placed and who happen to be born with a silver spoon in their mouth get better chances than those born in mud huts or cottages in the villages. All must, however, have equal chances.

There is to be a provision in the Constitution to the effect that there shall be Raj Pramukhs and not Governors, in the States and the States' Union and in this we observe there would be discrimination again on the basis of birth or descent, on the basis of one's being a prince or a member of a royal family or not. That sort of discrimination also should be eliminated. In fact all such discrimination should be eliminated.

Shri S. Nagappa (Madras : General): Mr. Vice-President. Sir, this clause as a whole gives independence, especially to the class for which this amendment is intended. I think you are aware that as a result of the hard labour and struggle under the leadership of Mahatma Gandhi, the country has become free politically. But this particular section of the population is doubly free, in that it is not only politically free, but it is also socially free. I hope the Honourable Pandit Jawaharlal Nehru who is the true successor of Mahatma Gandhi will see to it that we in this section of the population are made economically free too and are elevated. Freedom means political, social and economic freedom. Two aspects of freedom have been covered by this particular amendment, thanks to the efforts of Gandhiji who has brought about such a social revolution.

I would have been much more pleased, if this clause which intends to give social rights to this particular community had been more expansive and explanatory. Take for instance, the question of access to shops. Shops means places where you can purchase things by paying money. But there are places where you can purchase service. I would like to know if these places are also included in the word 'shop'. When I go to a barber's shop or a shaving saloon, I do not buy anything concrete, but I purchase labour. So also laundries. There I purchase the services of a washerman. I would like to know from the honourable the Mover if the word 'shop' includes all these kinds of places like laundries and saloons.

I come to clause (b) where reference is made to places of public resort maintained wholly or partly out of the revenues of the State. But what about other places which are not maintained either partly or wholly out of the revenues of the State? I would request that these words "maintained wholly or partly out of the revenues of the State" to be deleted. That would be better. Any way, I would like to get some explanation from the mover of this clause as to what places are covered by this clause. I am glad of the social revolution brought about by Mahatma Ganhdhi, within such a short period of years, from 1932 to 1948—only 16 years. Within this short period age-long disabilities and sufferings have been removed. I am confident that it will not take much time, especially with a statutory provision of this sort to carry the reform further. I hope that the Prime Ministers in the provinces would take note of this particular provision and see that before the Act is adopted, even the remaining disabilities vanish away, without waiting for the adaptation of this Act.

The third aspect of freedom remains, that is, economic freedom, and I hope that our Prime Minister will look to the economic elevation of the downtrodden classes. I support the clause whole-heartedly, and in doing so, request the mover to explain whether the word shop includes places of the kind I have referred to, and also whether places of public resort include places like burial or cremation grounds. These are not maintained out of public revenues or by public bodies, they being generally maintained by religious bodies. I would like to know whether there is to be a separate burial or cremation ground for these unfortunate sons of the soil, or whether all aspects are covered by this clause. I have raised this point so that these points may go down in the record of the proceedings of the House and be useful, if some lawyer were to misinterpret the meaning of the clause in some court of law. Most of our courts are courts of law and not justice. One

[Shri S. Nagappa]

should be more correct in framing the clause. I would like to know whether the honourable the Mover has considered this aspect of the matter. If he can include these words now I shall be pleased: otherwise if he can come forward and explain whether these disabilities are covered I shall be satisfied. At least it will be on record of the proceedings of this House, so that lawyers who attempt to misrepresent.....

Shri K. Hanumanthaiya (Mysore State): Sir, I take objection to the honourable Member's remarks about lawyers that they are used to "misrepresenting".

Mr. Vice-President : I would ask Mr. Nagappa not to try to answer the honourable Member.

Shri S. Nagappa : I am not abusing lawyers. I am only saying what they are doing.....

Shri K. Hanumanthaiya : That is worse.

Mr. Vice-President : Mr. Nagappa is not carrying out my request.

Shri S. Nagappa : Besides wells and tanks there are other places where one can draw water. I would like to have a full explanatory answer from the honourable Member.

Sardar Bhopinder Singh Man (East Punjab : Sikh): *[Mr. Vice-President, I feel that the Fundamental Rights, which are being conceded, will be incomplete if places of worship are not included in the list. It is often seen in life in India that the doors of many temples and other places of worship, meant for the public use, are not kept open for all sections of people by their custodians or Pujaris. This is a dark aspect; its prevalence has reduced these centres of love and fellow-feeling into breeding grounds for communalism and mutual hatred. This begets ill-will and hatred against one another. The greatest achievement of the Father of the Nation was to have the gates of temples opened for the untouchables. Today, we have yet to fulfil those expectations. An argument may be advanced that people, who are not aware of the ways to be followed and of the reverence to be shown there, cannot be allowed entry into temples or the places of worship. But my answer to that would be that if any such person wants to visit a temple, due precaution should be taken about him. But there is no reason for the discrimination, that one person may be allowed entry while another is stopped from doing so. I say this gap should be filled up, and this stigma should be removed from the face of India. These barriers of religion, which divide people of India from one another, should be uprooted forever. Therefore, I wish that this lacuna should be removed by accepting the amendment of Prof. K. T. Shah or amendments Nos. 296 and 297.]

Mr. Mohd. Tahir: Sir, this article says:

"The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them.

In particular, no citizen shall, on grounds only of religion, race, caste, sex or any of them, be subject to any disability, liability, restriction or condition with regard to—

(a) access to shops, public restaurants, hotels and places of public entertainment."

In this connection I have my amendment in which I have suggested that after the word 'hotels' the words "*Dharamsalas, Musafirkhanas*" be added. Sir we find that these two institutions are regularly run throughout our country by private funds. If a traveller who is in need of accommodation happens, fortunately or unfortunately, to be a scheduled caste or any other caste man who is not liked by the management of the *Dharamsala* he is not allowed to halt in the *Dharamsala.* And so is the case in respect to *Musafirkhanas* also. Therefore I submit that these words "*Dharamsalas, Musafirkhanas*" should be added

*[ ] Translation of Hindustani Speech.

Prof. Shibban Lal Saksena (United Provinces : General): Sir, this article should not have been put in this form. I would have wished that only the first three lines of this clause remained in the Draft and the rest were omitted. "The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or any of them", should be enough; by adding the sub-clauses we are really subtracting from the generality of the first clause. I personally also think that after we have provided for the abolition of untouchability under article 11, this particular sub-clause providing for the elimination of disabilities in regard to tanks, wells and roads is unnecessary. So far as such disabilities arise from untouchability, nobody will henceforward be able to practise them. Under article 11 no one can discriminate against any person on the ground of untouchability, as it has been made an offence punishable by law. I personally feel that the clause about the use of wells, tanks, roads, etc., does not seem to be worthy of finding a place in our constitution; for such disabilities as exist are merely transitory and will vanish with time. But if it becomes permanently incorporated in the constitution people in other parts of the world will despise us for the existence of such discrimination in the past. Article 11 is in fairly wide terms, so that every discriminatory action which is supposed to be due to untouchability will be forbidden. I therefore think that these sub-clauses are unnecessary and all these amendments would not have been moved if we had confined the article to the first three lines only. I may also point out the revolutionary character of this article. I know that there are hundreds of Hindu shops where food is served to Hindus only. Food is a matter where Hindus have got special habits and they generally will not allow anybody to enter the place where they eat food. I hope that the Hindu society will realise that they have now to change those habits and that anybody who is not a Hindu will be able to enter these shops or hotels where so far food is served to Hindus only. I think this is a very serious thing because henceforth it will be a fundamental right of every citizen to enter any Hindu Hotel. Anybody can now claim entry to any place where food is sold. I therefore think that we must prepare the ground to give effect to this change which is of a far-reaching character. Otherwise, there will be clashes everyday. I wish this clause (a) were kept as a Directive Principle of State Policy and were not made a fundamental right. That would have given the necessary time to Hindu Society to adjust itself to the needs of the situation. This portion of the article is particularly unnecessary in view of article 11 which provides for the banning of untouchability.

Shri R. K. Sidhwa (C.P. & Berar : General): Mr. Vice-President, Sir, I consider this sub-clause—sub-clause (b) of article 9—an important clause, I see that under this clause "places of public resort" cover places of amusements and the like and therefore there is no necessity to mention all the places like theatres and cinemas. Personally I feel that gardens and all these things are covered by this word "resort". It has been suggested that the words "places of worship" should also be included here. So long as this country has many religions I do not think it advisable to insert these words in this clause. It can be done only when we attain one religion in this country.

But there is one point to which I would like to draw the attention of the mover of the article. The words used here are "the use of wells, tanks, roads and places of public resort..." Ordinarily what we mean by "public" is every person or collection of persons of all communities, irrespective of caste or creed. But while I was referring to the Indian Penal Code I found the word "public" is defined in a restricted manner. Section 12 of the Indian Penal Code says that the word "public" includes any class of the public or any community..." The description "any class of the public" means that a Sanatani will be a "class of the community". The definition of the word 'public' is in such a restricted

[Shri R. K. Sidhwa]

manner that if a well is to be dug by a Sanatani in a village he will not allow the use of that well to the reformist or the Scheduled Caste. I do not know whether the attention of the honourable Mover has been drawn to this. I am only giving an illustration about one community. The Hindu will not allow the Muslim to draw water from that well, or *vice versa*. It may be said that this relates to the offences caused under the Indian Penal Code. But the Indian Penal Code relates to so many other offences. I do not know whether there is another Act where the word "public" is defined collectively irrespective of any caste or community. I had tabled an amendment also and I do wish that this should not be left in any ambiguity because this is the fundamental, the basis, on which we are protecting the rights of every citizen. For any breach of the fundamental right anybody can go to a court. Why should we leave it ambiguous and allow the public to go to the Supreme Court for getting the meaning of the word "public" defined? Why should we not make it very clear here and say that "public" means everyone irrespective of caste or creed, particularly when you have a restricted definition in the Penal Code? I therefore submit, with due respect to the knowledge of the legal luminaries that this matter should be made clear. To me, to every layman the meaning of the word 'public' is clear; but we find the meaning different in the law books. This matter therefore requires explanation to avoid any kind of complication in the future.

(One or two honourable Members rose to speak.)

Mr. Vice-President : You must forgive me if I am unable to meet the wishes of honourable Members. I want the full co-operation of the House and I ask it specially just now. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, dealing with the amendments which have been moved, I accept Amendment No. 280 moved by Mr. Rouf.

Shri Syamanandan Sahaya (Bihar : General): Will the honourable Member give his views also about amendments which have not been moved?

The Honourable Dr. B. R. Ambedkar : I am very sorry I cannot give opinions regarding amendments which have not been moved.

Shri Syamanandan Sahaya : It was no fault of the member concerned.

The Honourable Dr. B. R. Ambedkar : I cannot help it. I accept the amendment of Mr. Rouf adding the words "place of birth", I also accept the amendment (No. 37 in List I) by Mr. Subramaniam to amendment No. 276 dropping the words "In particular" in clause (1) of article 9.

With regard to amendment No. 303 moved by Mr. Guptanath Singh, I am prepared to accept his amendment provided he is prepared to drop the word "kunds" from his amendment.

Shri Guptanath Singh : I have already done that, Sir.

The Honourable Dr. B. R. Ambedkar : Then, among the many amendments which I am sorry I cannot accept, I think it is necessary for me to say something about two of them. One is amendment No. 315 moved by Mr. Tahir which requires that any contravention of the provisions contained in article 9 should be made a crime punishable by law. My Friend Mr. Tahir who moved this amendment referred particularly to the position of the untouchables and he said that in regard to these acts which prevent the untouchables from sharing equally the privileges enjoyed by the general public, we will not be successful in

achieving our purpose unless these acts, preventing them from using places of public resort, were made offences. There is no doubt that there is no difference of opinion between him and other Members of this House in this matter because all of us desire that this unfortunate class should be entitled to the same privileges as members of the other communities without any let or hindrance from anybody. But he will see that that purpose is carried out entirely by the provisions contained in article 11 which specifically deals with untouchability: instead of leaving it to Parliament or to the State to make it a crime, the article itself declares that any such interference with their rights shall be treated as an offence punishable by law. If his view is that there should be a provision in the Constitution dealing generally with acts which interfere with the provisions contained in article 9, I would like to draw his attention to article 27 in the Constitution which places an obligation on Parliament to make laws declaring such interferences to be offences punishable by law. The reason why such power is given to Parliament is because it is felt that any offence which deals with the Fundamental rights should be uniform throughout the territory of India, which would not be the case if this power was left to the different States and Provinces to regulate as they like. My submission therefore is that, so far as this point is concerned, the Constitution contains ample provision and nothing more is really necessary.

With regard to amendment No. 323 moved by Professor K.T. Shah, the object of which is to add "Scheduled Castes" and "Scheduled Tribes" along with women and children, I am afraid it may have just the opposite effect.

The object which all of us have in mind is that the Scheduled Castes and Scheduled Tribes should not be segregated from the general public.

For instance, none of us, I think, would like that a separate school should be established for the Scheduled Castes when there is a general school in the village open to the children of the entire community. If these words are added, it will probably give a handle for a State to say, "Well, we are making special provision for the Scheduled Castes". To my mind they can safely say so by taking shelter under the Article if it is amended in the manner the Professor wants it. I therefore think that it is not a desirable amendment. Then I come to my Friend Mr. Nagappa. He has asked me to explain some of the words which have been used in this article. His first question was whether "shop" included laundry and shaving saloon. Well, so far as I am concerned, I have not the least doubt that the word 'shop' does include laundry and shaving place. To define the word 'shop' in the most generic term one can think of is to state that 'shop' is a place where the owner is prepared to offer his service to anybody who is prepared to go there seeking his service. A laundryman therefore would be a man sitting in his shop offering to serve the public in a particular respect, namely, wash the dirty cloths of a customer. Similarly, the owner of a shaving saloon would be sitting there offering his service for any person who enters his saloon.

The Honourable Shri B. G. Kher (Bombay : General): Does it include the offices of a doctor and a lawyer?

The Honourable Dr. B. R. Ambedkar: Certainly it will include anybody who offers his services. I am using it in a generic sense.

I should like to point out therefore that the word 'shop' used here is not used in the limited sense of permitting entry. It is used in the larger sense of requiring the services if the terms of service are agreed to.

The second question put to me was whether 'place of public resort' includes burial grounds. I should have thought that very few people would be interested in the burial ground, because nobody would care to know what happens to him after he is dead. But, as my Friend Mr. Nagappa is interested in the point

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should say that I have no doubt that a place of public resort would include a burial ground subject to the fact that such a burial ground is maintained wholly or partly out of public funds. Where there are no burial grounds maintained by a municipality, local board or taluk board or Provincial Government or village panchayat, nobody of course has any right, because there is no public place about which anybody can make a claim for entry. But if there is a burial ground maintained by the State out of State funds, then obviously every person would have every right to have his body buried or cremated therein.

Then my Friend asked me whether ponds are included in tanks. The answer is categorically in the affirmative. A tank is a larger thing which must include a pond.

The other question that he asked me was whether rivers, streams, canals and water sources would be open to the untouchables. Wells, rivers, streams and canals no doubt would not come under Article 9; but they would certainly be covered by the provisions of Article 11 which make any interference with the rights of an untouchable for equal treatment with the members of the other communities an offence. Therefore my answer to my Friend Mr. Nagappa is that he need have no fears with regard to the use of rivers, streams, canals, etc., because it is perfectly possible for the Parliament to make any law under Article 11 to remove any such disability if found.

Shri S. Nagappa: What about the courses of water?

The Honourable Dr. B. R. Ambedkar: I cannot add anything to the article at this stage. But I have no doubt that any action necessary with regard to rivers and canals could be legitimately and adequately taken under article 11.

Shri R. K. Sidhwa: What about the interpretation of the word 'public'?

The Honourable Dr. B. R. Ambedkar: My Friend Mr. Sidhwa read out some definition from the Indian Penal Code of the word 'public' and said that the word 'public' there was used in a very limited sense as belonging to a class. I should like to draw his attention to the fact that the word 'public' is used here in a special sense. A place is a place of public resort provided it is maintained wholly or partly out of State funds. It has nothing to do with the definition given in the Indian Penal Code.

Shri Mahavir Tyagi (United Provinces: General): May I know what is to happen to the amendments which have been declared by you as verbal amendments? Among them I fear there are some which really aim at making a substantial change in the meaning of the clause or article concerned.

Mr. Vice-President : In that matter I am the sole judge. You have given me discretionary power and I propose to exercise that power in my own way.

Shri Mahavir Tyagi: I want information. I do not dispute your judgment or your right. I only want to know whether the sense of the House will be accommodated in regard to the amendments ruled out or whether such amendments will be considered by the Drafting Committee or some other body? My suggestion is that you will be doing well the House if you will kindly appoint a small sub-committee which will go into these verbal amendments and find out whether some of them at least aim at effecting a change in the meaning of the clause concerned. I do not dispute what you said. They are out of order because you have ruled them as such. But even commas and full stops have some value. My only request is that.....

Mr. Vice-President : May I suggest a better way which might appeal to you, a way which is better than the appointment of a sub-committee? Those who

think that their amendments are of some substance may approach the Drafting Committee directly themselves. If they do so I am sure due consideration will be shown to them.

Shri Mahavir Tyagi: Now I am satisfied, Sir.

Mr. Mohd. Tahir: As the Honourable Dr. Ambedkar has answered my points to my satisfaction with regard to amendment No. 315, I ask for leave to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Now I will put the rest of the amendments to the vote of the House. Dr. Ambedkar has accepted the first one.

The question is:

"That for amendment No. 276 in the List of Amendments, the following be substituted:—

'That the second para of clause (1) of article 9 be numbered as new clause (1a), and the words 'In particular' in the new clause so formed, be deleted.' "

The motion was adopted.

Mr. Vice-President : The next amendment is 279. The question is:

"That in article 9, after the word 'race' the word 'birth' be inserted."

The amendment was negatived.

Mr. Vice-President : The next one is No. 280 which, I understand, Dr. Ambedkar has accepted. The question is:

"That in article 9, after the word 'sex' wherever it occurs, the words 'place of birth' be inserted."

The amendment was adopted.

Mr. Vice-President : Then we come to the second part of amendment No. 286. The question is:

"That in sub-clause (a) of clause (1) of article 9, after the words 'restaurants, hotels' the words 'Dharamsalas, Musafirkhanas' be inserted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 293. The question is:

"That in clause (1) of article 9, for sub-clauses (a) and (b) the following be substituted:—

'any place of public use or resort, maintained wholly or partly out of the revenues of the State, or in any way aided, recognised, encouraged or protected by the State, or place dedicated to the use of general public like schools, colleges, libraries, temples, hospitals, hotels and restaurants, places of public entertainment, recreation or amusement, like theaters and cinema-houses of concert-halls; public parks, gardens or museums; roads, wells, tanks or canals; bridges, posts and telegraphs, railways, tramways and bus services; and the like.' "

The amendment was negatived.

Mr. Vice-President : Then we come to amendment No. 296. The question is:

"That in sub-clause (a) of clause (1) of article 9, after the words 'of Public entertainment' the words 'or places of worship' be inserted."

The amendment was negatived.

Mr. Vice-President : I do not remember what happened to 299. To be perfectly sure, I am going to put it to the vote. The question is:

"That in sub-clause (a) of clause (1) of article 9, the word 'public' be deleted."

The amendment was negatived.

Mr. Vice-President : Then amendment No. 301 standing in the name of Mr. Tajamul Husain. The question is:

"That in sub-clause (a) of clause (1) of article 9, between the words 'public' and 'restaurants' the words 'places of worship' Dharamsalas, Musafirkhanas' be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 303 as revised. I understand that Dr. Ambedkar has accepted it. The question is:

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, after the word 'wells, tanks' the words 'bathing ghats' be inserted."

The amendment was adopted.

Mr. Vice-President : Then amendment No. 305. The question is:

"That in sub-clause (b) of clause (1) of article 9, after the word 'roads' add a comma and also the words 'hospitals, educational institutions'."

The amendment was negatived.

Mr. Vice-President : Amendment No. 314. The question is:

"That in sub-clause (b) of the second paragraph of clause (1) of article 9, for the word 'the revenues of the State' the words 'State funds' be substituted."

The amendment was adopted.

Mr. Vice-President : Then the last amendment standing in the name of Professor Shah. No. 323. The question is:

"That at the end of clause (2) of article 9, the following be added:—

'or for Scheduled Castes or backward tribes, for their advantage, safeguard or betterment.' "

The amendment was negatived.

Mr. Vice-President : Now, I shall put the article as revised to the vote. The question is:

That article 9, as amended, form part of the Constitution.

The motion was adopted.

Article 9, as amended, was added to the Constitution.

Article 10

Mr. Vice-President : Shall we pass on to the next article, new article 9-A? The amendments here are in the form of Directive Principles. I disallow them. Then we go to article 10.

Shri T. T. Krishnamachari (Madras : General): I think the idea is to hold this over.

The Honourable Dr. B. R. Ambedkar : I request you to hold this article over.

Mr. Vice-President : Then we may go to the next article, 10-A.

(Amendment No. 369 was not moved.)

Article 11

Mr. Vice-President : We now come to article 11. The motion before the House is that article 11 form part of the Constitution. We shall now take up the amendments one by one. No. 370 is out of order. Amendments Nos. 371, 372, 373 and also 375 and 378 are of a similar character. I suggest that amendment No. 375 be moved.

(Amendments No. 375 and No. 371 were not moved.)

Mr. Vice-President : No. 372. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I move:

"That for article 11, the following article be substituted:—

'11. No one shall on account of his religion or caste be treated or regarded as an 'untouchable'; and its observance in any form may be made punishable by law.' "

I submit that the original article 11 is a little vague. The word "untouchability" has no legal meaning, although politically we are all well aware of it; but it may lead to a considerable amount of misunderstanding as in a legal expression. The word 'untouchable' can be applied to so many variety of things that we cannot leave it at that. It may be that a man suffering from an epidemic or contagious disease is an untouchable; then certain kinds of food are untouchable to Hindus and Muslims. According to certain ideas women of other families are untouchables. Then according to Pandit Thakurdas Bhargava, a wife below 15 would be untouchable to her loving husband on the ground that it would be 'marital misbehaviour'. I beg to submit, Sir, that the word 'untouchable' is rather loose. That is why I have attempted to give it a better shape; that no one on account of his religion or caste be regarded as untouchable. Untouchability on the ground of religion or caste is what is prohibited.

Then, Sir, I have one more word to say in this connection and that is that in line 3 of this clause in the midst of the sentence, the word 'Untouchability' begins with a capital letter. This is a matter for the Drafting Committee.

(Amendments 373 and 378 were not moved.)

Mr. Vice-President : Amendments Nos. 374, 376, 377, 379,380 and 381. I regard as verbal amendments and they are disallowed. Amendment No. 372 alone is moved. The article is now open for general discussion. I call upon Mr. Muniswamy Pillai to speak.

Shri V. I. Muniswamy Pillai (Madras : General): Mr. Vice-President, it is a matter of great satisfaction that this Constitution has brought out a very important item and thereby untouchability is to be abolished in this great land of ours. Sir, though article 9 concedes many of the facilities that are required for the abolition of untouchability, the very clause about untouchability and its abolition goes a long way to show to the world that the unfortunate communities that are called 'untouchables' will find solace when this Constitution comes into effect. It is not that a certain section of the Indian community that will be benefited by this enactment, but a sixth of the population of the whole of India will welcome the introduction and the adoption of a section to root out the very practice of untouchability in this country. Sir, under the device of caste distinction a certain section of people have been brought under the rope of untouchability, who have been suffering for ages under the tyranny of the so-called caste Hindus and all those people who style themselves as landlords and zamindars, and were thus not allowed the ordinary rudimentary facilities required for a human being. The sting of untouchability went deep into the hearts of certain sections of the people and many of them had to leave their own faiths and seek protection under religions which were tolerant. I am sure, Sir, by the adoption of this clause many a Hindu who is a Harijan, who is a scheduled class man will feel that he has been elevated in society and he has now got a place in society. I am sure that the whole country will welcome the inclusion of article 11 in this Constitution.

Dr. Monomohon Das (West Bengal : General): Mr. Vice-President, Sir, this clause about untouchability is one of the most important of the fundamental

[Dr. Monomohon Das]

rights. This clause does not propose to give any special privileges and safeguards to some minority community, but it proposes to save one-sixth of the Indian population from perpetual subjugation and despair, from perpetual humiliation and disgrace. The custom of untouchability has not only thrown millions of the Indian population into the dark abyss of gloom and despair, shame and disgrace, but it has also eaten into the very vitality of our nation. I have not a jot of doubt, Sir, that this clause will be accepted by this House unanimously; not only the Indian National Congress is pledged to it, but for the sake of fairness and justice to the millions of untouchables of this land, for the sake of sustaining our goodwill and reputation beyond the boundaries of India, this clause which makes the practice of untouchability a punishable crime must find a place in the Constitution of free and independent India. I refuse to believe, Sir, that there is even a single soul in this august body who opposes the spirit and principle contained in this article. So, I think, Sir, that today the 29th November 1948 is a great and memorable day for us the untouchables. This day will go down in history as the day of deliverance, as the day of resurrection of the 5 crores of Indian people who live in the length and breadth of this country. Standing on the threshold of this new era, at least for us, the untouchables, I hear distinctly the words of Mahatma Gandhi, the father of our nation, words that came out from an agonized heart, full of love and full of sympathy for these down-trodden masses. Gandhiji said: "I do not want to be reborn, but if I am reborn, I wish that I should be born as a Harijan, as an untouchable, so that I may lead a continuous struggle, a life-long struggle against the oppressions and indignities that have been heaped upon these classes of people." The word Swaraj will be meaningless to us if one-fifth of India's population is kept under perpetual subjugation. Mahatma Gandhi is no more among us in the land of the living. Had he been alive today, no mortal on earth would be more pleased, more happy, more satisfied than him. Not only Mahatma Gandhi, but also the other great men and philosophers of this ancient land, Swami Vivekananda, Raja Ram Mohan Roy, Rabindranath Tagore and others who led a relentless struggle against this heinous custom, would also be very much pleased today to see that independent India, Free India has at last finally done away with this malignant sore on the body of Indian society. As a Hindu, I believe in the immortality of the soul. The souls of these great men, but for whose devotion and life-long service India would not have been what she is today, would be smiling upon us at this hour at our courage and boldness in doing away with this heinous custom of untouchability.

Last of all, I cannot resist the temptation of saying a few words about our great and eminent Law Minister and Chairman of the Drafting Committee, Dr. Ambedkar. It is an irony of fate that the man who was driven from one school to another, who was forced to take his lessons outside the class room, has been entrusted with this great job of framing the Constitution of free and independent India, and it is he who has finally dealt the death blow to this custom of untouchability, of which he was himself a victim in his younger days.

Sir, I thank you for giving me this opportunity to express my views on this matter.

Shri Santanu Kumar Das (Orissa : General): *[Mr. Vice-President, I am grateful to you, Sir, for giving me an opportunity to express my views on clause 11 of the Draft Constitution.

This clause is intended to abolish the social inequity, the social stigma and the social disabilities in our society. Every body desires that the practice of

* [ ] Translation of Hindustani speech.

untouchability should somehow be abolished but nobody appears to be very helpful in its abolition. When everybody desires that this practice should be abolished, I fail to see why so much time should be wasted in a long discussion over it. The fact is that we merely want to enact laws about it and expect the rural people to observe these laws. We must ourselves first observe the law for otherwise there would be no sense in asking others to act upon it. If we fail to observe it, it would be impossible to root out this evil. Provincial Governments enact laws for the welfare of the Harijans; they pass bills for the removal of untouchability, for the removal of disabilities and for permitting temple entry but you will be surprised, Sir, if I tell you that our members act as fifth columnists in the rural areas, for they tell the people there that these laws are not in force and thus they themselves act against the law. I would request the Members of the House to try their best to make the law effective so that this present social inequity in the country may be removed. Sir, I support the clause whole-heartedly.]

Shrimati Dakshayani Velayudhan (Madras : General): Mr. Vice-President, Sir, we cannot expect a Constitution without a clause relating to untouchability because the Chairman of the Drafting Committee himself belongs to the untouchable community. I am not going into the details of the history and the work done by all the religious heads from time immemorial. You know that all the religious teachers were against the practice of untouchability. Coming to a later period, we found a champion in the person of Mahatma Gandhi and one of the items of the constructive programme that he placed before the country is the abolition of untouchability. While I was a student in the College, one of my class-mates approached me for subscribing to a fund for the abolition of untouchability. My reply was, 'you people are responsible for this and therefore it is for you to raise the money and it is not proper that you should ask me for money'. Even from my younger days, the very thought of untouchability was revolting to me. Even in public places like schools, untouchability was observed whenever there was a tea party or anything of that kind. What I did on those occasions was that I always non-cooperated with those functions. The change of heart that we find in the people today is only due to the work that has been done by Mahatma Gandhi and by him alone. We find that there is a vast change in the outlook and attitude of the people today towards the untouchables. Nowadays what we find is that the people who are called caste Hindus dislike the very idea of, or the very term, 'untouchability' and they do not like to be chastised for that, because, they have taken a vow that they are responsible for it and that they will see that it is abolished from this land of ours. Even though there is a large improvement on the part of the so-called caste Hindus, we cannot be satisfied with that. When this Constitution is put into practice, what we want is not to punish the people for acting against the law, but what is needed is that there should be proper propaganda done by both the Central and Provincial Governments. Then only there will be improvement that we want. If the Provincial and Central Governments had taken action previously I think there would have been no necessity for an article of this kind in this Constitution. Last year I brought a resolution before the Constituent Assembly for declaring that untouchability should be made unlawful. When I approached Panditji, he said that this is not a Congress Committee to move such a resolution, and that it will be taken up in course of time. My reply was that if a declaration was made in the Constituent Assembly, it will have a great effect. Even people in South Africa were chastising us because we were having this practice here. If a declaration is made by the Assembly here and now, it will have a great effect on the people and there will be no necessity for us to incorporate such a clause in the Constitution.

Mr. Vice-President : You have exceeded the time-limit. It is only because you are a lady I am allowing you.

Shrimati Dakshayani Velayudhan : The working of the Constitution will depend upon how the people will conduct themselves in the future, not on the actual execution of the law. So I hope that in course of time there will not be such a community known as Untouchables and that our delegates abroad will not have to hang their heads in shame if somebody raises such a question in an organisation of international nature.

Prof. K. T. Shah : Mr. Vice-President, Sir, lest I be misunderstood on the remarks that will follow, may I say at the very outset that I am not against the spirit of this article, or even its actual wording. I think, however, that the wording is open to some correction; and if the Honourable the Chairman of the Drafting Committee will consider what I am going to place before him just now, and before the House, I believe he might find room for some amendment himself of this article.

In the first place I would like to point out that the term 'untouchability' is nowhere defined. This Constitution lacks very much in a definition clause; and consequently we are at a great loss in understanding what is meant by a given clause and how it is going to be given effect to. You follow up the general proposition about abolishing untouchability, by saying that it will be *in any form* an offence and will be punished at law. Now I want to give the House some instances of recognised and permitted untouchability whereby particular communities or individuals are for a time placed under disability, which is actually untouchability. We all know that at certain periods women are regarded as untouchables. Is that supposed to be, will it be regarded as an offence under this article? I think if I am not mistaken, I am speaking from memory, but I believe I am right that in the Quran in a certain 'Sura', this is mentioned specifically and categorically. Will you make the practice of their religion by the followers of the Prophetan offence? Again there are many ceremonies in connection with funerals and obsequies which make those who have taken part in them untouchables for a while. I do not wish to inflict a lecture upon this House on anthropological or connected matters; but I would like it to be brought to the notice that the lack of any definition of the term 'untouchability' makes it open for busy bodies and lawyers to make capital out of a clause like this, which I am sure was not the intention of the Drafting Committee to make.

One more example I will give, Sir, which is of a hygienic, or rather sanitary, character, that seems to be completely overlooked by the draftsman. What about those diseases, and people who suffer from, which are communicable, and so necessarily to be excluded and made untouchable while they suffer? I remember, Sir, the case of a very well-known personage who was suffering from leprosy, and whom consequently a Public Carrier Company refused to carry from a particular place to another place. All the wheels of Government were moved to obtain a certificate that he may be carried in the plane without any harm to other passengers. I do not know whether it was his cheque-book or his munificence that helped him to get over that particular disability. But I am sure the example should be a warning to our Drafting Committee. Again, if a municipality, for instance, makes a temporary regulation about Quarantine, and makes it necessary that people suffering from communicable diseases or infectious or contagious diseases shall be segregated for a while until they are cured, and shall be regarded as untouchables, will it be an offence under this article? Surely it ought not to be possible for anybody to say that the action of that particular municipality is "unconstitutional" and so an offence at law. I trust the Chairman of the Drafting Committee will find that there is some sense in the suggestion I have put forward; and that he will not deal with it as a common opposition.

The Honourable Dr. B. R. Ambedkar : I cannot accept the amendment of Mr. Naziruddin Ahmad.

Mr. Vice-President : Dr. Ambedkar, do you wish to reply to Mr. Shah's suggestion?

The Honourable Dr. B. R. Ambedkar : No.

Mr. Vice-President : I now put amendment No. 372 to vote.

The question is:

"That for article 11, the following article be substituted:—

'11. No one shall on account of his religion or caste be treated or regarded as an 'untouchable'; and its observance in any form may be made punishable by law.' "

The amendment was negatived.

Mr. Vice-President : I now put article No. 11.

The question is:

"That article 11 stand part of the Constitution."

The motion was adopted.

Article 11 was added to the Constitution.

Honourable Members: "Mahatma Gandhi ki Jai".

Articles 11-A and B

Mr. Vice-President : We have five minutes and I propose to utilize it. There are two new articles 11-A and B standing in the name of Mr. Lari. Amendment No. 382.

Mr. Z. H. Lari (United Provinces : Muslim) : Mr. Vice-President, I move:

"That after article 11 the following new article be inserted:—

'11-A. Imprisonment for debt is abolished.

11-B. Capital punishment except for sedition involving use of violence is abolished.' "

Sir, the two clauses are distinct and consequently when considering and adopting them it is not necessary for the House to accept both simultaneously or to reject both. It is open to the House to accept one and not to accept the other or to accept both.

Mr. Vice-President : Why not move that separately.

Mr. Z. H. Lari : Then I move 11-B first. The House will remember that in the last session of the House, when sitting as the law making body, a Bill was before the House to amend Section 53 of the Indian Penal Code. That Bill went to the Standing Advisory Committee of the Ministry of Home Affairs that met on 20th March 1948. There they thought and decided that this matter of capital punishment should be considered by this body. That is why they deferred consideration of that Bill. Now I put it before the House in the form as desired by the Standing Committee.

So far as the question of abolition of capital punishment is concerned, it has been done so in various other countries. At least in thirty countries, including the Dominion of New Zealand, Russia, Holland, Belgium, Switzerland, capital punishment has been abolished. Only the other day this question came up before the House of Commons and the principle was accepted. No doubt, the House of Lords came in the way and the result was that the Bill before the House of Commons providing for the abolishing of capital punishment had to be rejected. But so far as the House of Commons is concerned, the principle of it has been accepted.

[Mr. Z. H. Lari]

Now, I will place only three considerations before this House. The first consideration is that human judgment is not infallible. Every judge, every tribunal is liable to err. But capital punishment is irrevocable. Once you decide a award the sentence, the result is that the man is gone. It may be that a mistake would have been committed by a tribunal. And I know of cases where subsequently it was found out that the man punished was not the real offender. But it was not within the power of any human being to get the mistake rectified. This is one consideration.

The second consideration is that human life is sacred and its sanctity is I think, accepted by all. A man's life can be taken away if there is no other way to prevent the loss of other human lives. But the question is whether capital punishment is necessary for the sake of preventing crimes which result in such loss of human lives. I venture to submit that at least thirty countries have come to the conclusion that they can do without it and they have been going on in this way for at least ten years, or twenty years, without any ostensible or appreciable increase in crimes. Therefore, the result of the experience gained by all these countries shows that you can govern the country without resorting to this punishment. That is the second consideration for this House.

The third consideration is that this is a punishment which is really shocking and brutal and does not correspond with the sentiments which prevail now in the present century. My submission would be that if we can do away with this capital punishment, it would be a good thing for the country and for the people. Many decades back, Dickens said that this punishment really encourages that section of the population which is determined on committing murders, to commit murders because that is accompanied by a sort of martyrdom. That concerns only that class of criminals who want to commit murders deliberately and with a purpose. To those who commit murders on an occasion which provides them with some sort of provocation, my submission would be that they can be better punished if life imprisonment is inflicted upon them because they will live for many more years and repent their actions and possibly reform themselves.

Lastly I would submit that the reformative element in punishment is the most important one, and that should be the dominant consideration.

Keeping all these considerations in mind, namely, of fallibility of human judgment, sanctity of human life and the purpose of punishment, we should vote for abolishing capital punishment.

I have made one exception, *i.e.,* of a situation which involves danger to the State. Naturally, when the existence of the state is at stake, and many more lives might be lost, it may be said that we should not take any risks. I say the time will come when even that exception will disappear. But for the sake of incorporating an article in the Constitution, we may accept this exception, and it will be open to the Parliament of the land to go further in two or three years' time and abolish capital punishment completely.

With these words, Sir, I move.

Mr. Vice-President : Then, will you move 11-A tomorrow?

Mr. Z. H. Lari : No Sir, I will not move it.

Mr. Vice-President : The House stands adjourned till 9-30 A.M. tomorrow.

The Constituent Assembly then adjourned till Half-past Nine of the Clock on Tuesday, the 30th November 1948.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 30*th November* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Half Past Nine of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register :

The Honourable Shri Krishna Ballabh Sahay (Bihar: General)

DRAFT CONSTITUTION—*Contd.*

New Article 11-B

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on amendment No. 382. Shri Amiyo Kumar Ghosh.

Shri Amiyo Kumar Ghosh (Bihar: General): Mr. Vice-President, Sir, I do not wish to make a long speech on the subject that is before us, nor do I propose to oppose the principle involved in the amendment which was moved yesterday by my Friend Mr. Lari, but, Sir, I oppose its being incorporated in the Constitution. By incorporating such a clause in the Constitution, practically we fetter the hands of the State for all time to resort to such punishment even if it is required by the exigencies of time.

Sir, it is true that the punishment is inhuman, it is true that the judges may err and there is the chance of innocent persons being sent to the gallows, but at the same time we will have to bear in mind that society does not consist of unmixed good elements only. There are evil elements too, and in order to check those evil elements from usurping the society or overawing the society at any time, the State may require such penalties to be imposed on persons who want to terrorize the society.

I think that with the growth of consciousness, with the development of society, the State should revise a punishment of this nature but the proper place of doing such a thing is not the Constitution. We can do it by amending the Indian Penal Code where such penalty is prescribed for different offences. We are now passing through a transitional period, serious problems are confronting us, different sorts of situations are arising every day, and so it is quite possible that at times the State may require imposition of such grave penalties for offences which may endanger it and the society. Therefore, Sir, on principle I agree that the capital punishment should be abolished, but the proper place for doing such a thing is not to provide a clause to that effect in the Constitution and tie the hands of the State, but it should be done by amending the Indian Penal Code or such other laws which impose such penalty. As I have already stated, the State may require the imposition of such penalties from the exigencies of circumstances and if such a clause is provided in the Constitution, the State will be unable to prescribe such a punishment without amending the constitution, which is a difficult matter.

Under these circumstances I oppose the amendment moved by Mr. Lari.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, the amendment moved by Mr. Lari is sponsored on the ground of consideration and following

[Shri K. Hanumanthaiya]

progressive ideas. The abolition of capital sentence is a matter open to argument, and I wish to differ from him. We have to look at this problem from two points of view: one from the point of view of the convict himself and the other from the point of view of the State. From the point of view of the convict, I had an idea that the convict would relish a life sentence in preference to execution. Some days back, I happened to read one of Bernard Shaw's dramas; it was a very good drama concerning the great heroine of France and there she prefers to be burnt alive rather than be kept in prison for a life time. He brings out that idea very beautifully in the drama, I had to change my opinion that the convict would prefer to be kept alive almost untouched by social intercourse and aloof behind the prison walls. The convict would any day prefer to go out of the world instead of being kept almost like a dead person behind the prison walls for a life time.

Then from the point of view of the State, a man who has no consideration for human lives does not deserve any consideration for his own life. Society is based not merely on reformation, but also on the fear instinct principle. To forget all other considerations except the question of reforming the convict does not hold the field and it has never held the field. If every man who takes away the life of another is assured that his life would be left untouched and it is a question of merely being imprisoned, probably the deterrent nature of the punishment will lose its value. The practice in prisons today is if a man is sentenced to life, he will be released, after concessions and remissions now and then given, in the course of about seven and a half years. Therefore, if a man who kills another is assured that he has a chance of being released after seven or eight or ten years, as the case may be, then everybody would get encouragement to pursue the method of revenge, if he has got any. For example, let us take this Godse incident.

Mr. Vice-President : No reference should be made to this particular individual.

Shri K. Hanumanthaiya : If a man who resorts to kill an important or a great man and if he is assured that he would be released after seven years or eight years, as the case may be, he would not hesitate to repeat what he has done, and conditions being what they are today, it would be very unwise from the point of view of the safety of the State and stability of society, to abolish capital sentence.

The Honourable Dr. B. R. Ambedkar (Bombay: General): I do not accept the amendment.

Mr. Vice-President : I shall put the amendment to vote. The question is:

That after article 11 the following new article be inserted:—

"11-B. Capital punishment except for sedition involving use of violence is abolished."

The amendment was negatived.

Article 10

Mr. Vice-President : We can now go back to Article No. 10. The motion before the House is:

"That Article 10 form part of the Constitution."

I shall now go over the amendments and then we may have a general discussion.

Amendment No. 326 is verbal and is disallowed.

As regards No. 327 perhaps Mr. Tahir will meet the objection which has been held by some people that the amendment is unintelligible.

Mr. Mohd. Tahir (Bihar: Muslim): Sir, I beg to move:

That in clause (1) of article 10, after the words "of employment" the word "acquisition", be inserted.

In this connection, I do not want to make any long speech. I simply want to mention that there are two aspects, one of employment and one of acquisition. Employment has already been mentioned; so I want that acquisition also should be added. That is all.

(No. 328 and No. 329 were not moved.)

Mr. Vice-President : Nos. 330 and 331 being verbal are disallowed.

(No. 332 was not moved.)

Amendments Nos. 333, 335 and 337 (first part), are the same. I can allow the first part of amendment No. 337.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, I beg to move:

"That in clause (2) of article 10, for the words "on grounds only" the words "on grounds" be substituted.

It is really a motion for deletion of the word "only" which seems to be redundant or rather causing some difficulty. The same difficulty has been felt by a large number of Honourable Members, as is evidenced by several amendments to the same effect.

Mr. Vice-President : The next one is No. 334.

Shri Lokanath Misra (Orissa: General): Sir, I beg to move:

"That that clauses (2), (3) and (4) of article 10, be deleted."

On this matter I need not make a long speech. To my mind clause (1) covers all cases and clause (2) is definitely included in clause (1), and clause (3) which refers to reservation of appointments to backward classes is really unnecessary because it puts a premium on backwardness and inefficiency. Everybody has a right to employment, food, clothing, shelter and all those things, but it is not a fundamental right for any citizen to claim a portion of State employment, which ought to go by merit alone. It can never be a fundamental right. If we accept that as one, it may be generous but this generosity will itself be a degradation to those people who are favoured with it. I think clause (4) is quite unnecessary because ours being a secular State, it should keep its hands clean of all religious institutions and the State need not bother about the management of any religious institutions. Therefore, here should be no thought of reservation of appointments in committees with reference to those religious institutions which are outside the care of the State. For these reasons, I consider clauses (2), (3) and (4) unnecessary.

Mr. Vice-President : Amendments 336 and 341 are of similar import. I can allow 336 to be moved.

Mr. Naziruddin Ahmad : I beg to move:

That for clause (2) of Article 10, the following clause be substituted:—

"(2) Every citizen shall be eligible for office under the State irrespective of his religion, caste, sex, descent or place of birth."

I have slightly altered my amendment in consequence of the form 'the State' adhered to by the House.

The only reason for suggesting this amendment is that it is more direct in form.

Shri H.V. Kamath : (C. P. and Berar: General): I do not move amendment No. 341, Sir.

Mr. Vice-President : Mr. Tahir may now move the second part of his amendment No. 338; the first part being verbal, I disallow it.

Mr. Mohd. Tahir: I move:

That in clause (2) of Article 10, after the words 'for any office', the words 'or employment' be inserted.

Sir, the clause as proposed to be amended by me would read:

"(2) No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or any of them, be ineligible for any office or employment under the State."

It is very simple and clear that, so far as 'office' is concerned, the clause is all right. But, as regards employment which in my opinion means also employment elsewhere than in an office, there is no provision. I therefore think it necessary that the words 'or employment' should be added after 'office'. I hope the Mover will accept it.

Mr. Vice-President : Mr. Ananthasayanam Ayyangar may now move No. 342.

(Amendment No. 342 was not moved.)

Mr. Vice-President : Professor Shah may now move amendment No. 339.

Prof. K. T. Shah (Bihar: General): I beg to move:

That in clause (2) of Article 10, after the words 'place of birth' the words 'in India' be added.

The clause as proposed to be amended by me would read:

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth in India, or any of them be ineligible for any office under the State."

Sir, the object of moving this amendment is to point out that this country is vast enough to meet from her own resources of manpower all that is needed to fill any office of responsibility and trust with efficiency in this country. We have examples of other dominions and countries making an implied reservation in their countries; that is to say, reserving offices, reserving posts, and reserving employment primarily for their own citizens and so we shall not be lacking in models to copy or precedents to follow. I suggest that if these words 'in India' are added to the clause as it stands, it does not necessarily mean that discrimination shall be made against those not born in India. All that it wants to convey is that no discrimination shall be made against anybody born in India, on account of his place of birth. I consider this is not only a very reasonable suggestion, but also a very necessary one. In the short space of time that we have achieved this independence of ours, and given the influence that seems to be still working to pull us along the lines of commonwealth allegiance and association, we do not know how and where we may be getting to. Personally, I hold the view that by making a reservation of this kind, not only is no injustice or invidious discrimination intended, but what is necessary for our own protection, development and advancement can only be achieved by our own children, by the sons and daughters of the soil only. As such the first claim, a preferential claim for any available employment in this country, should be that of the natives of the land.

Sir, it is unnecessary to point out that the citizens or the nationals of this country have been discriminated against, and discriminated against very shamefully, in certain parts of the commonwealth as it is called now, like South Africa. Elsewhere, if they do not say so openly in the Constitution, if they do not say so by any specific legislation, they nevertheless maintain a policy of "White Australia", or White Canada, impliedly conveying the desire that coloured people are not wanted; or if they go there, they shall be under disabilities that will for ever handicap them.

If this is the experience that we are getting even today, even after achieving our independence. I do not see why we in this country should not also take

care, that our Constitution primarily and preferentially reserves all available places of employment, of trust, or responsibility for the children of the soil.

As I started by saying, this does not at all mean that you shall make a categorical discrimination against the citizens of other countries, though there are plenty of examples of that kind even in the existing Constitutions of some of the leading countries of the world. We would certainly not be starting on a new track altogether, even if we were to make a provision of that kind. Given the history that we have, given the suffering that we have endured, given the exclusion of our own countrymen from our public service in all branches by the foreigners who ruled and distorted the requirements of country's advancement it would be, to me at any rate, not only nothing surprising, but nothing in proper if we do make a categorical and positive provision, making a clear exception in the case of those who have exploited and abused their position in this country.

However, Sir, we have been told on good authority that we should let bye-gones be bye-gones, and that we must forget the unfortunate past of this kind. I personally would not be responsible for reviving unpleasant memories, if we can overcome them. It is, therefore, I want to add a clear injunction, that only those born in India, and owing allegiance to this country, shall get any place of responsibility or trust in this country. I would not, indeed, lay it down in the Constitution negatively, i.e., I would not require that no one born outside India shall hold any place of trust or responsibility, profit or power in this country, however justified one may feel from past experience. But while that amount of liberalism may well be shown even by us in spite of our memories, I should certainly think that the reservation I am suggesting is equally necessary, if not more so, *viz*., that the responsible employment in places of trust available in this country should be reserved for the nationals of this country only. We have in the recent past been obliged to use powers of this kind against those who have discriminated against our nationals in their own jurisdiction. This might be difficult to do hereafter under the new Constitution if a provision of this kind remains in the Constitution, and there was no authority for us to make a discrimination of the kind I am conveying. I therefore think that there is nothing improper, that there is nothing out of order in making a suggestion that the places of employment, opportunities of service in the country should be reserved for the nationals of the country. I hope the House will accept it.

Shri M. Ananthasayanam Ayyangar (Madras: General): Sir, I want to say a few words.

Mr. Vice-President : You can do it during the general discussion.

Shri M. Ananthasayanam Ayyangar : Sir, when you called out amendment No. 77 in List No. 2, I did not follow you. It also arises in connection with article 10. With your leave I beg to move:

"That with reference to amendment No. 338 of the List of Amendments....."

Shri H. V. Kamath : On a point of order, Sir, is the amendment now under discussion or the article and the amendments?

Shri M. Ananthasayanam Ayyangar : I am moving an amendment.

Mr. Vice-President : The position seems to be that, when I called out his name previously to move his amendment, Mr. Ayyangar's mind was elsewhere and he did not follow what was happening. He wants to move his amendment now. Am I right?

Shri M. Ananthasayanam Ayyangar : Yes, Sir, that is the position.

Mr. Vice-President : You can move it as a special concession. I hope I have the support of the House behind me.

Honourable Members : Certainly.

Shri M. Ananthasayanam Ayyangar : Sir, with your permission, I beg to move—

"That with reference to amendment No. 338 of the List of Amendments:—

(i) in clause (1) of article 10, for the words "in matters of employment", the words "in matters relating to employment or appointment to office" be substituted; and

(ii) in clause (2) of article 10, after the words "ineligible for any" the words "employment or" be inserted."

This is only intended to clarify the position and also to include the word "office" so that it may be more comprehensive. This does not require any further elaborate speech. I request the House to accept this amendment.

Shri Jaspat Roy Kapoor (United Provinces: General): Mr. Vice-President, Sir, I beg to move:

"That in clause (2) of article 10, after the word 'birth' the words 'or residence' be inserted.

Thereafter the clause will read as follows:—

"No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth or residence, or any of them, be ineligible for any office under the State."

Sir, the object of my amendment is that every citizen of the country, where ever he might be living, should have equal opportunity of employment under the State. (Every citizen irrespective of his place of residence should be eligible for employment under the State anywhere in the country. Sir, there being only one citizenship for the whole country, it should carry with it the unfettered right and privilege of employment in any part and in every nook and corner of the country. A citizen residing in the province of Bengal, Madras, Bombay or C. P. should be eligible for employment in the U. P. and similarly a resident of the U.P. should have the right and privilege of employment in any other province of the country, provided of course he possesses the other necessary qualifications for the office. Every citizen of the country, Sir, I think, must be made to feel that he is a citizen of the country as a whole and not of any particular province where he resides. He must feel that wheresoever he goes in the country, he shall have the same rights and privileges in the matter of employment as he has in the particular part of the country where he resides. Unfortunately, Sir, for some time past we have been observing that provincialism has been growing in this country. Every now and then we hear the cry, "Bengal for Bengalis", "Madras for Madrasis" and so on and so forth. This cry, Sir, is not in the interests of the unity of the country, or in the interests of the solidarity of the country. We find that some provincial governments have laid it down as a rule that for employment in the province the person concerned should have been living in the province for many years. One of the provinces, Sir, I am told, has laid it as a rule that they will employ only such persons as have resided within the province for fifty two years. I do not know how far it is correct. Possibly there is some exaggeration in the report that has been conveyed to me, but the fact remains that provincial governments are being pressed by the citizens of the province to lay down such rules in order to prevent residents of other provinces from seeking service under that provincial government. I can easily understand a provincial government laying it down as a rule that only those who possess adequate knowledge of the provincial language shall be eligible for employment in the province. I can also understand, Sir, a rule being laid down that a person who wants employment in the province should have adequate knowledge of local conditions.

Mr. Vice-President : I am hearing other honourable Members more than the Member who is occupying the rostrum.

Shri Jaspat Roy Kapoor : I was submitting, Sir, that I can easily understand provincial governments, in the interests of efficiency of the services, laying it down as a rule that only those who have adequate knowledge of the pro-

vincial language shall have employment in the province. I can also understand their laying down that persons seeking employment in the province must have adequate knowledge of the local conditions. All that is easily understandable in the interests of efficiency of the services, but to lay it down as a rule that one should have resided in the province for fifty-two years to become eligible for employment seems to me, Sir, to be simply absurd. If a man of fifty-two seeks employment, he can serve only for three more years. I submit, Sir, that this is a tendency which must be checked with a strong hand. I, therefore, submit that in the matter of employment there should be absolutely no restriction whatsoever unless it is necessary in the interests of the efficiency of the services. The unity of the country must be preserved at all costs; the solidarity of the country must be preserved at all costs. We must do everything in our power to preserve the unity of the country, and the amendment that I have moved aims at this and is a step in this direction; and I, therefore, commend it for the acceptance of the House.

Mr. Vice-President : There are two amendments to amendment No. 340. The first is Amendment No. 81 in list III.

Shri K. M. Munshi (Bombay: General): I beg to move:

"That in amendment No. 340 of the List of amendments, in clause (2) of article 10, for the words 'or residence' proposed to be inserted, the word 'residence' be substituted."

This is a verbal amendment, because in the next phrase the words "or any of them" are used. This is just to bring the whole language of the clause to run in an appropriate way, I move this amendment.

Mr. Naziruddin Ahmad : Are not verbal amendments prohibited now?

Shri K. M. Munshi : It is for the Chair to rule whether this falls within this category or not.

Mr. Vice-President : I am very thankful to the honourable Member for the suggestion he has made. It will be taken into account. Mr. Munshi, you may go on.

Shri K. M. Munshi : That is all I want to say. It only eliminates the word 'or' which occurs after the word 'residence' in the clause as it stands.

Shri Alladi Krishnaswami Ayyar (Madras: General): The amendment which I have the honour to move runs in these terms:

That with reference to amendment No. 340, after clause (2) of article 10, the following new clause be inserted:—

"(2a) Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an office under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment.

The object of the amendment is clear from the terms and the wording of it. In the first part of the article, the general rule is laid down that there shall be equal opportunity for all citizens in matters of employment under the State and thereby the universality of Indian citizenship is postulated. In paragraph 2 of article 10, it is expressed in the negative, namely that no citizen shall be ineligible for any office under the State by reason of race, caste, sex, descent, place of birth and so on. The next two clauses are in the nature of exceptions to the fundamental and the general rule that is laid down in the first part of the article. Now what the present amendment provides for is this that in case of appointments under the State for particular reasons, it may be necessary to provide that residence within the State is a necessary qualification for appointment by and within the State. That is the object of this amendment and instead of leaving it to individual states to make any rule they like in regard to residence, it was felt that it would be much better if the Parliament lays down a general rule applicable to all states alike, especially having regard to the fact

[Shri Alladi Krishnaswami Ayyar]

that in any matter concerning fundamental rights, it must be the Parliament alone that has the power to legislate and not the different Units in India. Under these circumstances, I propose this amendment for the consideration of the House.

Shri H. V. Kamath : On a point of clarification, Sir, may I know from my honourable friend, Mr. Alladi Krishnaswami Ayyar whether the words here expressed "any State for the time being specified in the First Schedule" applies to all the four parts of the First Schedule? The first Schedule consists of four parts. Three parts refer to the States and the last part refers to the Andaman and Nicobar Islands; and we have already adopted article 1 which states in sub-clause (2) that "the States shall mean the states for the time being specified in Parts I, II and III of the First Schedule." May I know from him whether "any State for the time being specified in the First Schedule" means all the States and territories comprised in all the four parts of the First Schedule? In that case the language of this amendment will have to be modified. It will have to read "under any state or territory in the first four parts, I, II, III and IV of the First Schedule," and if you want to retain only the word 'State', then it will be 'under any State specified in Parts I, II and III of the First Schedule.'

The Honourable Dr. B. R. Ambedkar : It is quite obvious that we have not specified parts. We have merely said 'First Schedule' and First Schedule includes all the States in the first Schedule.

Shri H. V. Kamath : Article 1 says 'the States included for the time being specified in Parts I, II and III of the first Schedule.' The territories comprised in Part IV is not a State according to our Constitution.

The Honourable Dr. B. R. Ambedkar : There should be no attempt to make any distinction at all.

Shri H. V. Kamath : If my point is unanswerable, I have nothing to say.

Shri Alladi Krishnaswami Ayyar : If you only refer to the First Schedule, you will find that Part I refers to the territories known immediately before the commencement of this Constitution as the Governor's Provinces. Part II deals with the territories known immediately before the commencement of this Constitution as the Chief Commissioners' provinces, of Delhi, Ajmer-Merwara and so on. Part III deals with Indian States. All these three categories are referred to and described as 'States' in Article 1. Part IV of Schedule 1 are Andamans and Nicobar Islands. These are not States but territories.

Shri H. V. Kamath : I do not know how you get over this difficulty; Andaman and Nicobar Islands is not a State.

Shri Alladi Krishnaswami Ayyar : The Andamans would be under the jurisdiction of the Centre and they will be a part of the Central jurisdiction. There this principle as to residence within that particular locality does not apply to Andaman and Nicobar Islands. The idea is that so far as Andaman and Nicobar Islands are concerned, the Centre must have a free hand. So far as States in parts I, II and III alone are concerned they must be invested with the authority to provide 'residence' within the State as a necessary qualification.

Shri H. V. Kamath : It will be consisted if you say 'under any State or territory comprised in Parts I, II, III and IV of the First Schedule,' or "any State specified in Parts I, II and III of First Schedule". Otherwise it will not.

Mr. Vice-President : I suggest that the House will kindly let me go on with the other amendments and in the meantime the honourable Member may go and try to persuade Mr. Alladi Krishnaswami Ayyar to accept his point of view. I think that is the most practical solution of our difficulty. (*Interruption*).

Mr. Naziruddin Ahmad : I suggest that as this is only a verbal amendment, the matter may be left over the Drafting Committee.

Mr. Vice-President : Let me pass on the next amendment. We are not putting it to the vote just now.

Shri M. Ananthasayanam Ayyangar : Sir, I beg to move:

"That in clause (2) of article 10, after the word 'ineligible', the words "or discriminated against" be inserted.

Sir, not only can discrimination be made at the outset when a person is appointed, but after the appointment takes place, he may be permanently kept in the first post which he occupied originally. In the matter of promotions etc., there may be discrimination. Ineligibility for appointment may not cover these classes of cases. Therefore, to make it clear and to give effect to the intention of the particular clause, the words "or discriminated against" are necessary. I request the House to accept the same.

(Amendment No. 343 was not moved.)

Shri Damodar Swarup Seth (United Provinces : General) : Sir, I beg to move:

"That clause (3) of article 10 be deleted."

Sir, the reason for my submission is that though the clause on the face of it appears to be just and reasonable, it is wrong in principle. Who will not believe it, Sir, that reservation of posts or appointments in services for the backward classes means the very negation of efficiency and good Government? Moreover, it is not easy to define precisely the term 'backward'; nor is it easy to find a suitable criterion for testing the backwardness of a community or class. If this clause is accepted, it will give rise to castism and favouritism which should have nothing to do in a secular State. I do not mean that necessary facilities and concessions should not be given to backward classes for improving their educational qualifications and raise general level of their uplift. But, Sir, appointments to posts should be only left to the discretion of the Public Services Commission, to be made on merit and qualification, and no concession whatever should be allowed to any class on the plea that the same happens to be backward.

Mr. Vice-President : Then, we come to amendment numbers 345 to 349. These are of similar import.

Pandit Lakshmi Kanta Maitra : (West Bengal : General) : I am not moving amendment No. 345, Sir.

Mr. Vice-President : From amendments numbers 346 to 349, I have selected amendment No. 348 which stands in the name of Pandit Hirday Nath Kunzru.

Pandit Hirday Nath Kunzru : (United Provinces : General) : Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 10, for the words 'shall prevent the State from making any provision for the reservation' the words 'shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation' be substituted."

If this amendment is made, Sir, clause (3) would read as follows:

"Nothing in this article shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation of appointments of posts in favour of any backward class of citizens who.....etc."

Sir, I am not in principle against the protection of the interests of classes that are at present unable to look after themselves unaided; but this article, as it is, presents several difficulties. In the first place, the word 'backward' is not defined anywhere in the Constitution. There is another article in the Constitution, namely article 301, that provides for the appointment of a Commission to enquire into the condition of the backward classes. But, it is stated there that only those classes will come within the purview of the enquiry that are educationally or socially backward. There too there is no enumeration of the

[Pandit Hirday Nath Kunzru]

classes to which the enquiry will refer. This article is even more indefinite. Whether any class is backward or not, should be left to the law courts to decide. It is therefore our duty to define the term 'backward' so that there may be no dispute in the future about its meaning.

My second point Sir, is this. While granting protection to communities that have been left behind in the race of life, is it desirable that any special provisions laid down for them should operate indefinitely? Or is it desirable both in the interest of the backward classes and the State that any special provisions made for these classes should be of limited duration? If this article remains as it is and if reservation of appointment or posts can be made in favour of any backward class indefinitely, the State might come to think that it had done its duty by these classes by making this provision. I think and I believe that the House, if left to itself, would agree that it is desirable that the operation of such a provision should come under review from time to time so that we may be able to see whether the State had taken such steps as were necessary in order to lift these classes from their present position and enable them to compete on terms of equality with the other classes.

Sir, my third argument is that the provision with regard to the reservation of seats in the legislatures for the minorities, which must include the depressed classes and the scheduled tribes, according to the draft constitution is to be of limited duration. Now nobody can deny at the present time that a provision of this kind is necessary for these classes and it must be obvious to everybody here that representation in the legislature is of far greater importance than representation in services. If a community is represented in the legislature, its representatives can voice its demands from time to time and can see that any injustice done to that community either in the matter of appointment to posts or in any other matter is rectified. But if it ceases to be represented in the legislature, whatever protection might be granted to it in this or that matter, it will be in a far more helpless condition than if it were deprived of any other special aid. Now it has been provided in the Constitution that the reservation of seats for the minorities which include the scheduled tribes and depressed classes, who must according to any definition be regarded as backward, is limited to ten years. Article 305 lays down that the provision for the reservation of seats for the minorities according to their population shall continue in force unchanged for ten years and no more. On the expiration of ten years from the commencement of the Constitution this "provision shall lapse unless its operations is extended by an amendment of the Constitution. Now is it not desirable that a similar limitation should be laid down in clause (3) of article 10? Indeed it can be applied with greater force to article 10 than to the reservation of posts for the minorities in the Central and Provincial administrations. If clause (3) of article 10 is to be in comformity with the scheme for the protection of the interests of the backward classes, I submit that it is not merely desirable but necessary that the amendment that I have proposed should be made.

Lastly, Sir, I should like to know what is the relationship between clause (3) of article 10 and article 296. Article 296 provides that the claims of minority communities shall be taken into consideration consistently with the maintenance of efficiency in the administration in the making of appointments to services and posts in connection with the affairs of the Union or of a State for the time being specified in Part I of the First Schedule. Now in so far as clause (3) of Article 10 applies to all States specified in the First Schedule, the difference between it and article 296, which applies only to States specified in Part I of the First Schedule, is clear. But beyond that it is far from clear what the relationship between these two articles is. Article 296 relates to minorities. The claims of the minority communities can be taken into consideration in making appointments to services only on the ground that they are backward. Though it is the

word 'minority' that is used, in article 296 and the expression 'backward classes' is used in article 10 (3), it seems to me that in fairness to the country protection can be granted to any class, whether you call it a backward class or a minority, only on the ground that it is backward and if left to itself, would be unable to protect its interests. This shows the need for clearing up the connection between the two articles that I have just referred to. Apart from this, I should like to know whether if clause (3) of article 10 were passed, it would be possible for sections within the various communities to ask for special protection for themselves in the matter of appointments to services or posts. It may be that if clause (3) of article 10 is passed, it will not be possible for State to make any reservations in the services for minorities as such. But will it not be a temptation to sections of these and other communities to claim that they are backward in order to get the protection of clause (3) of article 10? Sir, I submit that we should have a system that would not encourage fissiparous tendencies and under which it will not be to the interest of any class to claim that it is backward. It is desirable therefore to limit the operation of any special protection that we may grant—protection of whatever kind—that its duration should be limited, so that the legislature may from time to time be able to see how it has worked and how the State has discharged its duty towards the protected classes. Unless this is done, I venture to think that article 10 would not be in conformity with the intention of the constitution to remove all those conditions on account of which special protection is necessary. We are all aware that when the Report of the Minorities Committee was considered by the House, the entire House was anxious that reservations of whatever kind should be done away with as quickly as possible. It was recognized that for the time being they were necessary, but it was insisted on that whatever protection might be considered necessary now, should be granted temporarily only, so that the population of the country might become fully integrated, and no community or class might be tempted to claim special advantages for itself. On these grounds, Sir, I venture to put forward my amendment though I have no doubt whatsoever, that it will not find favour with my friend Dr. Ambedkar.

Mr. Vice-President : The other amendments which are placed in the same category are Nos. 346, 347, and 349. I want to know whether it is proposed that I should put them to vote.

(Amendment Nos. 346, 347, 349, 350, 351 and 352 were not moved.)

No. 353 and 360 are of the same nature, and I would like to have them considered together.

(Nos. 353 and 360 were not moved).

Shri V. I. Muniswamy Pillay (Madras: General): I do not move amendment No. 353, but would like to make a statement.

Mr. Vice-President : You can do so during the general discussion.

Then we come to No. 354 to No. 357.

(No. 354 and No. 355 were not moved).

Mr. Aziz Ahmad Khan (United Provinces: Muslim): *[Mr. President. I propose:

That in clause (3) of Article 10 the word "backward" be omitted.

Sir, I would like to submit that at the time when the minority Report was submitted to this House, the word "backward" was not there and we had finally decided that it is unnecessary to include the word "backward". Moreover, if you look at the Draft Constitution, you will find that there are several articles

* [ ] Translation of Hindustani Speech.

[Mr. Aziz Ahmad Khan]

of such a nature that in case this amendment is not accepted, those articles become opposed to article 10; I refer to articles 296 and 299.

I have listened with attention the speech just delivered by Shri Kunzru. His object was to emphasise that under the new conditions created in India, if any protection is to be given, it could be given only to those particular classes of people who are educationally or culturally backward. Only such people require protection and not the minorities. In his opinion, no class or group as such requires any protection under the existing conditions. In my opinion, however, only those people require protection who have misgivings that in case protection is not given, their rights will not be preserved. I think that in case state services are monopolised by one particular class, then others might think that their existence has been ignored. This very idea will become a source of creating unpleasantness in the country. To my mind, therefore, this amendment is essential. I am of the opinion that in the new set up which we have to make in the country, we should neither create nor multiply differences. Nevertheless, it is a fact that due to the changes which we are introducting in the country, there are minorities who require protection. Safeguards should be provided for them and this can be done easily.

Sir, by article 296 such a safeguard has been provided and in article 299 also a similar provision has been made. I would like to submit that if as a matter of fact we are shaping this country in such a manner that there should not remain any difference, then it is necessary that there should not be any impediment that might create a feeling in the mind of an individual who has educational and citizenship qualifications that his claims are being ignored. Therefore, if this Article is not amended, then there will be doubts and misgivings among the minorities that they are being ignored. I do not say that it is necessary to recruit 20 per cent. Sikhs, 15 per cent. Christians or 15 per cent. Muslims in the public services of our country. I want only this much that if the Sikhs, the Muslims, the Christians and similar other groups living in the country, have educational and other requisite qualifications, then their claims should not be overlooked. Therefore, I think if this word be deleted from this article, then we shall not be accused of overlooking the claims of any particular class. To my mind if the word 'backward' is deleted, then the hand of the Government will be strengthened in such a way that it will enable the Government from time to time to make adequate arrangements in case the claims of any particular group are overlooked in public services. I think that this article would fetter the powers of the Government so tightly that they will not be able to remove the defects and the differences which exist today and they will continue. On these grounds, I hope that the House will accept this amendment which is certainly inconsonance with the Minority Committee's Report.]

Mr. Vice-President : There is an amendment to this amendment, that is No. 43 of List No. 1. I see it is not going to be moved. Then there is amendment No. 357 standing in the name of Shri Shankar Rao Deo and Acharya Jugal Kishore; they are not in the House. We next come to amendment No. 358 which is a verbal amendment. I can allow amendment Nos. 359, 361 and 362 to be moved. No. 359 is in the name of Shri Ranbir Singh, he is not in the House. Then comes No. 361—Shri Lokanath Misra.

Shri Lokanath Misra : I am not moving.

Mr. Vice-President : Then 362 stands in the names of Dr. Pattabhi and others. They are not moving it. Then No. 363 in the name of Prof. Shah. The second part of this amendment and amendment No. 366 are the same.

Prof. K. T. Shah : Sir, I beg to move:

"That in clause (4) of article 10, after the words 'in connection with' the word 'managing' be added, and the words 'or denominational' and 'or belonging to a particular denomination' be deleted."

The amended article as suggested by me would read:—

"Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with managing the affairs of any religious institution or any member of the Governing Body thereof shall be a person professing a particular religion."

The other words would be deleted.

As I understand the purpose of this article, I think what is wanted is that any exclusive religious institution, specifically concerned with a particular sector denomination, should be conducted by people professing that religion, sect or faith, and that none not so professing should be allowed to be associated with the management of it. If you use the very much broader words, that is to say "in connection with"—"any person holding any office in connection with"—I venture to think that those words may also include any *honorary* office or a mere place of honour in recognition of some donation, or some special gifts or some other service, which it would not be right and proper should go wholly unrecognised for mere reasons of difference in religious belief, especially if such institutions are conducting or having other activities besides merely religious or sectarian.

As illustration, may I give this. I can conceive of, let us say, educational institutions like universities or hospitals or other similar foundations, which may be regarded as devoted to or connected with a particular religion, in the governance of which a provision like this, without the amendment I am suggesting, may work needless mischief. In those bodies the mere holding of an honorary fellowship, or senatorship, or some kind of an honorary lecturership should not be excluded. I am sure it was not the intention of the draftsmen to exclude such merely honorary connection. But I feel that their wording, as it stands, is liable, at least in the laymen's judgment, to be misconstrued; and at times offer opportunity to extra-clever lawyers to make new capital out of such provision.

So, I for one would not like to leave any room for the exercise of such ingenuity at the expense of the Community, or of the interests or the ideals which we are accepting here. In making provision of this kind, it seems to me, if I may make a general observation, that the draftsmen seem to be torn between two rival ideals: one suggesting the Constitution for a wholly secular State, in which religion has no official recognition, and therefore trying to make, so far as the civic life of the community is concerned, no provision or distinction in favour or in connection with a religion, sect or a denomination.

On the other hand, there seems to me to be a pull—somewhat sub-conscious pull, if I may say so—in favour of particular religions or denominations, whose institutions, whose endowments, whose foundations, are sought to be protected and kept exclusive by making exceptions of this kind. After all, this clause (4) is an exception to the main principle of the article; and, being an exception, it seems to secure immunity or exclusiveness for the management of the institutions of particular denominations, which the draftsmen somehow sub-consciously have sought to provide. That is to say, without denying the basic principle of a secular State, they have introduced by the back door so to say new amendment or exceptions, which seem in my eyes to take away the spirit of the whole provision as contained in this article.

I think, therefore, that if it was made clear by the addition of the words that I have suggested, namely, that no one not professing a particular religion need be associated with *managing* the affairs of that institution it would suffice. It would serve the purpose, if such purpose is to be served, of the original Foundation; and at the same time it would give you all the safety, all the unconcern, if I may put it that way, of a State which favours no particular religion.

[Prof. K. T. Shah]

There is nothing objectionable in my amendment that I can see, though I shall listen with interest to any opposition or objection which the draftsmen or their champions may have. Until they say no, and convince me to the contrary perhaps it would be just as well to commend this amendment with these words to the House.

(Amendments Nos. 367 and 368 were not moved.)

Mr. Vice-President : No. 365 is verbal and is disallowed.

(Amendments Nos. 367 and 368 were not moved.)

Mr. Vice-President : Regarding No. 82 on list II, there was some objection raised by Mr. Kamath.

The Honourable Dr. B. R. Ambedkar : He is satisfied with the explanation given by Mr. Munshi.

Shri H. V. Kamath : No, Sir. It has not removed my difficulty. It has not removed the doubts in my mind. Let them explain again, if they can. I do press my point.

The Honourable Shri Ghanshyam Singh Gupta (C. P. & Berar): The point raised by Mr. Kamath is really ticklis hand it requires some consideration. There seems to be no doubt about it. Now, Sir, the amendment reads thus:

"Nothing in this article shall prevent Parliament from making any law prescribing in regard to a class or classes of employment or appointment to an officer *under the State* for the time being specified in the First Schedule or any local or other authority within its territory any requirement as to the *residence within that State* prior to such employment or appointment."

Now, the word "State" occurs in two places in the Draft Constitution. One is in Article 1 and the other is in Article 7. The meaning of the word state in Article 1 is comprehensive and mostly relates to the territorial side of it, and in Article 7 it relates to the authoritative side of it, the Government part of it. I shall read the latter: Article 7 says:

"Unless the context otherwise requires, the State includes the Government and the Parliament of India and the Government and the Legislature of each of the States and of local or other authorities within the territory of India or under the control of the Government of India."

So Article 7 which defines the word "State" does not define the territory but it defines the authority of the State. Article 1 defines the territory of the State. The amendment speaks of both. So, when we say employment or appointment to an office under any State, there we say the authority of the State; so there is nothing wrong because Article 7 would mean all the territories of the States in Schedule I. As soon as we say that "In this part, unless the context otherwise requires, the State includes all....." so far as this article 7 is concerned, the whole of Schedule I is covered and there is no doubt about it. Then, Sir, Article 10 refers to appointment to an office under the State,—there is nothing wrong because here "under the State" means as defined in Article 7, and because the definition of article 7 covers the whole of the State including the territories in the First Schedule. That is all right. But when we come to the other part of it, as to residence within that State, there the rub arises. The residence cannot be in the authority; the residence must be in the territory and therefore we cannot invoke Article 7; we must necessarily go to Article 1 and when we go to Article 1, there in part (4) of Schedule I becomes excluded. This is my point.

Mr. Vice-President : Before we start the general discussion, I would like to place a particular matter before the honourable Members. The clause which has so long been under discussion affects particularly certain sections of our

population—sections which have in the past been treated very cruelly—and although we are today prepared to make reparation for the evil deeds of our ancestors, still the old story continues, at least here and there, and capital is made out of it outside India. Every time we seek to place discussions in the international sphere on a high plane, it is at once thrown in our teeth that we have been treating certain sections of our brethren in a very unjustifiable way. I would therefore very much appreciate the permission of the House so that I might give full freedom of discussion on this particular matter to our brethren of the backward classes. Do I have that permission?

Honourable Members: Certainly.

Mr. Vice-President : I will first call upon Mr. Gurung.

Shri H. V. Kamath : Before you proceed to the discussion of the article, won't you finalise the amendment of Mr. Alladi Krishnaswami Iyer? The difficulty raised by me has not yet been answered.

Mr. Vice-President : That will be taken up later on.

Mr. Naziruddin Ahmad : I have a preliminary matter. This contravenes some amendment which has already been accepted. There is in line 3 in Amendment No. 82 the expression "any State." We have accepted the expression "the State."

Mr. Vice-President : I cannot permit you to speak now. Mr. Gurung may speak.

Shri Ari Bahadur Gurung (West Bengal: General) Mr. Vice-President, I thank you very much for the opportunity given me to speak on this occasion. I am particularly happy to note the provision in Clause 3 of this article which says.

'Nothing in this article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizens who, in the opinion of the State, are not adequately represented in the services under the State.'

Sir, may I take it that the word 'backward' includes three categories of people, namely Scheduled Castes, and Tribals and one particular class which is not included so far, under the term 'backward' although it is educationally and economically backward? If I may say so, Sir, 90 percent. if not more of the Indian people are educationally and economically backward; the meaning of the word 'backward' seems to be vague to me. I feel I shall be failing in my duty to a particular section of the Indian people, *viz.,* the Gurkhas, if I do not voice their feeling at this stage.

The Gurkhas, I must bring to the notice of the House, are three millions, if not more, domiciled in India. They are educationally and economically backward. I feel that the Gurkhas who are domiciled in India should have the same privilege as other backward communities in India. Sir, it is a known fact that the Gurkhas have played their part in the preservation of the independence of India and are now actually fighting in Kashmir after fighting in Hyderabad. They have had their share of the work in the preservation of India's independence. I assure the House that the Gurkhas who are now domiciled in India owe their full allegiance to the Indian Government. There had been a deep-rooted suspicion in the minds of many that the Gurkhas owe allegiance to the Government of Nepal. Today, on the floor of the House, I assure you that the Gurkhas who are domiciled in India owe allegiance to the Government of India and not to the Government of Nepal. These Gurkhas will not hesitate to shed their last drop of blood to preserve the independence that we have got.

There has been a very good gesture since the 15th August 1947 regarding the Gurkhas. When the Britishers were ruling in India, the Gurkhas were given only Viceroy's Commissions in the Army, but since 1948, many Gurkhas have been given emergency commissions as officers and I understand some of them

[Shri Ari Bahadur Gurung]

have risen to the rank of Colonels too. This grant or recognition has been a very good gesture.

Now this clause in article 10 makes a provision in favour of the backward classes of citizens who in the opinion of the State are not sufficiently represented in the services of the State. Today, I feel that the Gurkhas who had their opportunity to serve in the army and are educated, with this provision, may be taken to the civil side of the administration. I hope that the Gurkhas who have shown their bravery and valour in the army would show equal intelligence and integrity in the civil departments.

Thank you very much, Sir.

Shri R. M. Nalavade (Bombay: General): Mr. Vice-President, Sir, I am very glad to express the support of the depressed classes to article 10 which is now under discussion. In this article, particularly in clause (3) there is provision made for reservation in the services for the backward classes. But the words 'backward classes' are so vague that they could be interpreted in such a way as to include so many classes which are even educationally advanced. They are found mentioned in the list of backward classes. If the words 'Scheduled Castes' might have been used it would have been easier for the depressed classes to get adequate representation in the services. Our experience in the provinces, though there are provisions for reservation in the services, is bitter. Even though the depressed classes are educated and qualified, they are not given chances of employment under the Provincial Governments. Now that we have provided for this in the Constitution itself, there is no fear for the Scheduled Castes. According to this clause we can be adequately represented in the provincial as well as in the Central services. I therefore support this clause on behalf of the depressed classes.

Dr. Dharam Prakash (United Provinces: General): *[Mr. Vice-President, it is an undoubted fact that "backward" class has not been defined so far and there is no possibility of its being defined in the near future. In fact there is no community which does not have a section of people which is backward, whether economically or educationally or socially. Thus there are backward people in every community. Personally I believe that if there is to be any reservation for backward classes in the services it is very necessary to see as to what is the present position and what is to be the future of a particular class which has been backward for centuries, whether religiously or economically or socially. This view needs careful consideration.

The first objectionable feature of this clause is that it can be instrumental in bringing about a great crisis even in the present circumstances. Every honourable Member knows that our national government has inherited an administrative machinery which always had a very narrow communal, provincial or religious outlook. Even now it is an undeniable fact that whenever the question of reservation in services arises, the people of any province holding a majority of posts or the person holding any office are led by provincial or individual interests in making appointments. If the person concerned belongs to the province of the officer he is favoured from the provincial point of view. If he belongs to his community, he is favoured from the communal point of view and if he belongs to his caste, sub-caste or section, he is favoured from that point of view. The officer does not take into consideration the merit of the candidate but only sees whether he can serve his interest. Therefore he encourages such people alone to join the services. It cannot be expected of this machinery of the old pattern, which is moving at its present speed with great effort, that it will act impartially in making appointments to the services. This is a great danger and to remove it, I think, it is necessary to clarify impartially

*[ ] Translation of Hindustani speech.

as to who are the backward classes. This may remove the difficulty. The atmosphere in the country today is such as compels us to demand reservation not in the services but also in the Legislatures. Otherwise I am of the opinion that in a country, which has become free and the constitution of which is being framed with full freedom, there is no necessity for reservation. But the great difficulty which forces us to make a demand for reservation is that there is no such generosity and impartiality in our society as a society needs for its welfare nor is there any possibility of its being there in the near future. Therefore, as it has been suggested by the amendment, I submit that the words 'backward class' should be substituted by 'depressed class' or 'scheduled class' because the latter have a definite meaning. Among the scheduled castes have been included a number of those classes which are accepted by all to be backward. Therefore I support this amendment in the form that the words 'backward class' should be substituted by the words 'scheduled caste.' I think that reservation in services too is necessary for them for some time. Otherwise I do not even like to have any reservation in the legislatures. I personally hold the view that in this free country it is not proper to make reservation for Hindus, Muslims, Christians and Sikhs on the ground that they are minorities. But in so far as that section of Hindus is concerned who are called Harijans, and they are really backward,—it appears to be appropriate that there should be reservation for some time. That too should be for some time only. When they reach the same level of culture as other sections of the population have, I would be the first person to oppose any reservation whatsoever for them. So long as they do not attain that position, I favour reservation. Therefore, I submit that with the addition of these words reservation in services will prove to be useful instead of being harmful.]

Shri Chandrika Ram (Bihar: General): *[Mr. President, I rise to express my support for Article 10. Several amendments have been moved for inserting the words "Scheduled Castes" after the words "Backward classes" in this article. I would like this to be done. Members are perhaps aware of the fact that the question of reservation for Depressed Classes and Scheduled Castes was discussed by the Advisory Committee but it was lost by a single vote. Otherwise there would have been, legally binding provisions for reservation in services for the Harijans. But as it is, I find that people are wondering why the expression "Backward Classes" has been put in this article and why is it that 'Backward Class' has not been properly defined. The members of the House who have had occasion to go through the Census Reports specially of the years 1921 and 1931, would have found that the expression 'Backward Class' has, in away, been defined there in. So far as I think, and this opinion is borne out by these Reports, our society is divided into three sections—The highest consisting of that section of our society which is known as 'Caste Hindus' and the lowest of the section known as Scheduled Castes or Harijan, while the third occupying a middle position between these two and consisting of a large portion of our people is what may be termed as the Backward Class. I am sorry that this backward class for whose cause Honourable Pandit Hirday Nath Kunzru has pleaded, has not been given reservation in Legislatures, that is neither in the assemblies nor in the councils. I may cite Bihar as a case in point. According to the Census Report, the backward class constitutes a major section of the population of the province. But you will find that with the only exception of Ahir community no other community has been given representation in the Council or Assembly of the province. Their population in the province is about five millions. There are altogether 152 seats in the Assembly and 30 seats in the Council; but in both the Houses the Backward Class has got only two seats. No doubt they are not treated as untouchables. Moreover from the educational and economic point of view they are in a much better condition than the other communities. If a community, however, is to progress and occupy a high position in

*[ ] Translation of Hindustani speech.

[Shri Chandrika Ram]

society it is essential that it must possess political rights. If a community, howsoever large it may be within a society and whatever pre-eminence it may have reached in the matter of its culture, does not possess political rights and has also no political representation in the Council and the Assembly, I am afraid, I cannot see how it can have the same status as the other communities in the eyes of the State. I, therefore, think that just as we have provided for reservations for the Harijans in Services, in Assemblies and in Councils, it would be proper on our part to make similar provision for backward classes also for whom Pandit Hirday Nath Kunzru has argued so feelingly. We have provided so many privileges to Harijans on the ground that they are backward and I fail to understand why the same argument should not be applied for providing reservations for the backward classes. I think that this is a view requiring serious consideration. We are framing a constitution for our country by which we intend, and this has been specifically stated in the preamble, to secure to all citizens 'Justice, social, economic and political.' But I think that we are actually denying political rights to a large section of our countrymen who constitute in my opinion, a majority of the population. We profess to be providing equal opportunity to all but in fact we are denying this to the backward classes. Therefore, if we really mean to secure equal opportunity to all we should, in Article 10, not only provide for reservation of appointments or posts in favour of backward class of citizens but should also provide for reservation of seats in Legislatures for them. I would like to answer the objection of many members against the retention of the words 'backward class' in this article.

Particularly my socialist friends Seth Damodar Swarup and Pandit Lokanath Misra have moved amendments seeking deletion of the word 'backward class.' The first observation I would like to make in this connection is that I do not understand why Sethji who is a member of the Socialist Party, which, as is well known, desires to secure representation for every section of the population, should be raising an objection against the provision in this clause which is for the benefit of the 'Backward Class.' To those who think that no backward class exists in the country, I would only say that they are blind to the facts of the history of our country, to the progressive society of today and to the conditions obtaining at present. I therefore commend wholeheartedly the labours of the Drafting Committee in this respect. With these words, Sir, I support the amendment as it is.]

Shri P. Kakkan (Madras: General): Mr. Vice-President, Sir, I am very glad to support Article 10. The poor Harijan candidates hitherto did not get proper appointments in Government services. The higher officers selected only their own people, but not the Harijans. Sir, even in the matter of promotions, we did not get justice. The Government can expect necessary qualifications or personality from the Harijans, but not merit. If you take merit alone into account, the Harijans cannot come forward. I say in this House that the Government must take special steps for the reservation of appointments for the Harijans for some years. I expect that the Government will take the necessary steps to give more appointments in Police and Military services also. For example, in Kashmir the poor Harijans are fighting with great vigour. I say in this House that the Harijans must be given more jobs in this Government and be encouraged by the Government. With these few words, I finish my speech, Sir.

Shri V. I. Muniswamy Pillay : Mr. Vice-President, Sir, in the first two clauses of Article 10, it has been made clear that all citizens will have a general right for the services, but when we come to clause (3), by putting the word 'backward' which has already been pointed out by one of the honourable members, it has not been defined properly. So this throws me in confusion, whether the communities that were left out early in the administration for their due share have

been provided for. Sir, in the great upheaval of making a Constitution for this country, I feel that the communities that have not enjoyed the loaves and fishes of the services should not be left out. It is for this purpose, I gave notice of an amendment and a further amendment signed by more than fifty members has been presented to this House, but for reasons well-known to you, Sir, I could not move that amendment. But I wish to make it clear that unless there is an assurance that these communities—I specially mean the Scheduled castes—are given a chance, unless there is an assurance that these communities will at all times betaken into account and given enough and more chances in appointments, their uplift will still stand over. The other day, Sir, our Honourable Deputy Premier, Sardar Patel, has clearly said that not only justice must be done to the Harijans, but their case must be treated with generosity. It is in that view and spirit I request that a clear indication should be given by this House that the interests of the Scheduled Castes will be looked after. Sir, some honourable Members feel that reservation is not necessary. I think this is unwholesome thinking, because so long as the communal canker remains in the body politic, I feel there will be communities coming up for reservation; but the case of the Scheduled Caste is not pleaded on a matter of communalism, because they have been left in the lurch and due to their lack of social, economic and educational advancement for years and decades it is necessary, and I also feel that their case must be presented in this House vehemently, so that we may get justice at all times. At the same time I may tell this House that it is not the object of any of the leaders of the Harijan community to perpetuate the communal bogey in this land for ever, but so long as they remain so backward in getting admission into the services, it is highly necessary that they must be given some protection. Sir, in the past, the Government of India had made provision experiencing their inadequacy in the services; and even in my own province the Government of Madras have issued a communal G. O. and thereby they have given chances for the Harijans. Apart from that all those people who have been recruited from the Scheduled Castes have proved worthy of the choice. If I may say so, Sir, even in the Military, we know that in Kashmir they have played their part most efficiently and the very existence of the Chairman of the Drafting Committee here shows the ability that the Scheduled Castes possess.

Shri T. Channiah (Mysore): Mr. Vice-President, Sir, the retention of the word 'backward' in clause (3) of article 10 has created some doubt among honourable members from the Madras province. It is a fact, of course, Sir, that the word 'backward' has not been specifically defined in the Draft Constitution. Honourable Members coming from Northern India have been puzzled to note that honourable members coming from the south are very particular about this coming from Northern India are aware that there is a clear distinction between Hindus and Muslims; that much they understand very clearly. They also know that among the Hindus there are classes of people who are agricultural classes, and also people who are engaged in artisan works. They also belong to the backward class. In South India, Sir, the term 'backward classes' is very distinct. The Backward classes in South India, as I am aware, are either socially backward or educationally backward. The only classes who do not fit in this context namely clause (3) of article 10 are those who are economically forward. They feel that the word backward, if retained, will come in the way of their interest, namely, entertainment of these classes in the services. Therefore, Sir, the backward classes of people as understood in South India, are those classes of people who are educationally backward, it is those classes that require adequate representation in the services. There are other classes of people who are socially backward; they also require adequate representation in the services. The economically forward class of people are really disinterested in the word 'backward' appearing in clause (3) of article 10.

[Shri T. Channiah]

To give a clear picture of this, Sir, I would like to state what obtains in Mysore. There are two classes of vacancies, A and B classes. For the A Class vacancies, both the Brahmins and the Non-Brahmins are competent to apply, whereas for the B class vacancies, only the backward classes are entitled to compete. Sir, these backward communities suffer from two disabilities, namely, social disabilities and educational disabilities. It is from these two points of view, that the State Government has specifically provided the appointments in the B class. Therefore, Sir, it is but right that the word "backward" appearing in clause (3) of article 10 should be retained. As the Honourable Dr. Ambedkar has rightly said, the retention of the word 'backward' will be very appropriate also for this reason, namely, that clauses (1) and (2) of article 10 would be null and void if this word 'backward' is not retained in clause (3) of article 10.

Mr. Vice-President : Sorry, there are other speakers who want to speak.

Shri T. Channiah : I am really sorry that the honourable Pandit Kunzru should have felt that the backward class should be given this opportunity only for a period of ten years. Sir, I want this reservation for 150 years which has been the period during which opportunities have been denied to them.

Mr. Vice-President : Mr. Channiah, will you please go to your seat?

Shri Santanu Kumar Dass (Orissa : General): *[Mr. Vice-President, it is not my desire to say anything in connection with Backward classes which are being discussed here. The evil effects of foreign rule in our country prevent us from immediately deleting all provisions relating to Reservations from our Constitution. So long as these conditions continue in our country we will continue to demand reservations in the services for the Harijans and the scheduled castes, for these are covered by the term 'backward class'. We will go on scrutinising the number of Harijans, Muslims and Christians in the services. Now-a-days a minority fears that without reservation it would not be able to gain seats in Elections or employment in services. You know that there are many vacancies in the Railway and Postal Departments. These posts are advertised. We receive interview letters and our candidates come from distant places for interview, but their cases are not at all considered and they are totally ignored, whereas those who have been working as apprentices are selected as they have a strong backing from their departments. What do we gain by these advertisements? When there is a chance we are ignored. Then, why do you advertise at all? Is it only to please Panditji or Sardarji?]

Mr. Vice-President : You are wandering from the point.

Shri Santanu Kumar Dass : *[This also puts the gazetted officers of the scheduled castes and minority community into difficulty. Seth Damodar Swarup has just said that there is no need for reservations as Public Service Commission would secure impartiality. But in this connection I would like to point out that though there is a Public Service Commission, and candidates appear at its examination and many of those who qualify appear in the lists, yet when there is a chance of filling posts those who have not even appeared at the examination are taken in. How does it happen? It happens because such people have a strong backing which enables them to get selected. I am afraid the continuation of Public Service Commissions would be of no use for us.

At present there is reservation in the elections and thereby we get a chance to discuss our problems here. But If there was no such reservation it would not be possible for us to come here as we would not be able to win in the

*[ ] Translation of Hindustani speech.

general elections. I therefore, submit that there should be reservation in services and elections.

There is one thing more: It has been said that reservation should be kept for ten years. Why only for ten years? If we get equal rights within two years all would be on the same level after that period and there would be no need for reservations. With these words I support the article.]

Shri Jaspat Roy Kapoor : Sir, may I submit that many of us do not appreciate the Marshal going to the speaker and asking him to resume his seat?

Mr. Vice-President : I am sorry for what the Marshal did; but it was not at my request. He is over-zealous.

Shri H. J. Khandekar : (C. P. & Berar : General): Sir, may I request you one thing with reference to the time limit? The speakers here are mostly Harijan speakers and they require some time to explain the situation. I would therefore request you to increase the time limit so that they can explain and support this article very well.

Mr. Vice-President : Yes.

Shri H. J. Khandekar : Mr. Vice President, Sir, I have come here to support article 10 which is being discussed in the House. Before supporting it I congratulate the friend who in the Drafting Committee has inserted this word 'backward' in article 10 clause (3). If this word 'backward' had not been here, the purpose of the scheduled caste would not have been served as it should be. The condition of the scheduled castes has been explained by many friends who made their speeches in the House. The condition is so deplorable that though the candidates of the scheduled castes apply for certain Government posts, they are not selected for the posts because the people who select the candidates do not belong to that community or that section. I can give so many instances about this because I have got the experience from all provinces of the country that the scheduled caste people though they are well qualified do not get opportunity and fair treatment in the services. It would have been better if the word 'scheduled caste' as has been proposed by an amendment by my friend Mr. Muniswamy Pillay would have been inserted in this article. Because the term 'backward' is so vague that there is no definition of this word anywhere. I do not agree with my friend Mr. Chandrika Ram saying that the definition of the word 'backward' is given inthe census report. That is the definition of the word 'scheduled caste' and a list of the castes included in the scheduled caste. But I think the friend who has inserted this word in this article is aiming at the community known as the scheduled caste and when this Constitution is passed and when the article comes into operation, I hope that the Executive who will operate this clause or this Constitution will also aim at the community known as scheduled castes. Our revered leader Thakkar Bapa is in the House. He has been working for this community for about sixteen years as the General Secretary of the Harijan Sewak Sangh. He knows the difficulties of this community socially, economically, educationally, religiously and even politically. If I may say here leaving aside all these aspects, and if we consider the aspect politically, this community is not represented anywhere if no reservation of seats are given to that community.

Mr. Vice-President : You had better confine yourself to the article under discussion. How does politics enter into the picture at all?

Shri H. J. Khandekar : Therefore, if I leave aside the political aspects of the community and come to the social, educational, economical and religious aspects, the condition of the scheduled caste in this respect also is more deplorable than that of any man living in this country. I may say, that if a candidate of the scheduled caste applies for a particular post in the Government of

[Shri H.J. Khandekar]

India or in the Provincial Governments he is ordinarily ignored. There are commissions for recruiting these candidates. There is a Federal Public Service Commission, there are provincial Commissions; and while recruiting—you know, Sir, we people are educationally backward and we cannot come in competition with the other communities—If the qualifications for the Harijan candidates are not relaxed, our candidates will not be able to compete with the candidates of the Brahmin community or the so-called Savarna Hindus. Then if our candidates go to the F.P.S.C. or the Provincial Commissions they will not be successful in the selections as these commissions are not represented by us. I therefore think that while bringing this clause into operation, the F.P.S.C. or the Provincial Commissions should be instructed to relax the qualifications in connection with the Harijan candidates or the Scheduled Caste candidates and there should also be Harijan representatives on these commissions. Moreover, Sir, I know and the House and you too, Sir, know that the Government of India—I mean the present Government of India—has issued a circular about the services for the Scheduled Caste. They have said that in higher services $12^1/_2$ per cent. of the seats are reserved for the scheduled caste and in the lower services $16^1/_2$ per cent. are reserved for them.

Sir, if you just see how the recruiting of scheduled castes candidates is going on in practice, you will find that not even 1 per cent. of these candidates has been recruited in the higher services and in the lower services of the Government of India. Look at the Provincial Governments that have been run by our popular ministries. Even in those provinces, the scheduled castes have no adequate representation in the services. I, therefore, would have been very glad if after or before the word "backward", the word "scheduled castes" had been inserted, because this term 'backward' is a vague one and while making the selections, communalism will arise and the commissions, I do not blame them, will be helpless. As was said here by certain friends of mine, communalism is going on, and provincialism is going on and other things are also going on and I am afraid if these things are continued, even if this clause is brought into operation, the scheduled castes will never get a chance, as the word 'backward' would be interpreted in such a way that we people would get no chance in the services because the people of other castes will also claim to be backward and get the chances on reserved posts. Therefore, Sir, before resuming my seat, I would request you to see that the machinery which will operate this clause should be so pure, that no discrimination of any sort should be made between scheduled castes and other people who come under the category of backward classes. With these words, Sir, I take my seat.

Mr. Mohamed Ismail Sahib (Madras: Muslim): Mr. Vice-President, Sir, this word 'backward' I cannot understand in the context in which it is put here in clause (3) of article 10. If one reads the clause without this word, then one can quite clearly and easily understand its meaning. But when the word 'backward' is inserted, it obscures the meaning a great deal. The word 'backward' has not been defined at all anywhere in this Constitution. But I may tell you it has been defined in certain places. In Madras it has got a definite and technical meaning. There are a number of castes and sub-castes called backward communities. The Government of Madras have counted and scheduled more than 150 of these classes in that province and in that province when you utter the word 'backward', it is one of those 150 and odd communities that is meant, and not any community that is generally backward. And I may also say that those 150 and odd communities constitute almost the majority of the population of that Province, and every one of these communities comes from the Hindus—the majority community. In that list the scheduled castes are not included, and if you include the scheduled castes also in the class of those backward communities, then all of them put together, will form decidedly the majority of the whole population of that province. I want to know whether by inserting the

word 'backward' here you mean the same backward classes as the Madras Government means, I want to know the meaning of the word. I submit that it should not in any way be taken to mean that the backward classes as those of the minority communities such as Muslims, Christians and the scheduled caste people are excluded from the purview of this clause. As a matter of fact, there are backward people amongst the non-majority people as well. The Christians are backward. As a matter of fact they are not adequately represented in the services of the provinces. So also the Muslims, and also the Scheduled Castes. If any provision is made, it has to be made for such really backward people. It may be pointed out that such a provision is made in article 296 under the minorities rights. But there the article does not speak of the reservation for those people in the services as this clause (3) does. Therefore, it is here, and that in the fundamental rights that such a provision ought to be made for such minorities as the Muslims, Christians and the Scheduled Castes.

Then Sir, I am opposed to the amendment moved by Pandit Kunzru. He says that the Government shall have the right or option of providing for reservation only for a period of ten years. Sir, the measure or yard-stick in any such matter should not be the period of time. The backwardness of the people is the result of conditions which have been persisting and in existence for several centuries and ages, and these will not die off easily. So the measure really should be the steps that are being taken to liquidate that backward condition, and it should be the forwardness of the people which has resulted as a consequence of those steps. Therefore, when these people advance and have come forward as much as any other community in the land, then these very reservations would automatically disappear. I feel that no period need be stipulated at all for this purpose. That period might be less than ten years, or it may be more than ten years, according as the backwardness persists or disappears. The measure, as I said, should be the effect and result of the steps that are being taken for removing and eliminating those conditions which go to make the backwardness. I would now request the mover of the motion to atleast remove the word 'backward' and make it clear to the House that here, when the clause speaks of reservation, it means also minority communities, who stand in need of such reservations.

Sir, there is only one more point which I have to touch upon. When we speak of reservations and rights and privileges, the bogey of communalism is being raised. Sir, communalism does not come in because people want their rights. When people find that they are not adequately represented, they rightly feel that they must have due representation and then such a demand comes up. It comes because of their non-representation in the services, and because of their discontent. When such discontent is removed, the unity of hearts comes in. It is the unity of hearts and not any attempt at a physical unity that will do good to the country and to the people. The differences will be there, but there must be harmony and that is what we all really want, and that harmony can be brought about only by creating contentment amongst the people. And reservation in services is one of the measures we can adopt to bring about contentment among the people. You can then say to the people, "Look here, you have your proper share in the services and you have nothing to complain." When people themselves find that they are given as good an opportunity as others, harmony will be there and the so-called communalism will not come in at all. There are countries which have followed the procedure which I am advocating and quite effectively, they have eliminated communalism. Therefore, I say that one of the ways of removing disharmony and producing harmony, is to make provision for the people's representation in the services and to make them feel that they have got a real share and an effective share in the governance of the country.

Sardar Hukam Singh (East Punjab : Sikh): Mr. Vice-President, Sir, the point that I want to press before this House has already been touched upon

[Sardar Hukam Singh]

by one or two Members. The Honourable Pandit Kunzru has said that he wants to enquire what relation there is between article 10 and article 296. Certainly if we take article 10, clause (1), it is laid down there that "there shall be equality of opportunity for all citizens in matters of employment under the State". That would mean that when posts are to be filled, that would be done by open competition and the topmost men would be taken in. That is quite all right; that should be the procedure.

But when we look at articles 296 and 297, those two articles lay down that claims of all minorities shall be taken into consideration:—

"Subject to the provisions of the next succeeding article the claims of all minority communities shall be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments....."

To me it seems that there is some conflict between these two articles. If we are to fill up these posts by open competition and on merit, certainly we cannot give recognition to the claims of all minorities. Then the best men would be taken in and if some members of the minorities do happen to succeed, that would not be on the consideration of their claims as minorities but that would be under article 10 as equal citizens of the State. If they get those posts in open competition, it is all right; but if they are not adequately represented by that method, then what article 296 implies is, that special consideration shall be shown to them to see that their representation is made up.

Sir, there can be only one of these two things—either there can be clear equal opportunity or special consideration. Article 10 says there shall be equality of opportunity, then it emphasises the fact by a negative clause that no citizen shall be discriminated on account of religion or race. It is quite good, but when no indication is given whether this would override article 296 or article 296 is independent of it, we are certainly left in the lurch. What would be the fate of the minorities?

In clause (3) this new phrase "backward class" of citizens has been introduced. We had heard of "depressed classe", "scheduled castes", but this "backward class of citizens", so far as our part of the country is concerned, we have never seen used in any statute. Just now we have been told that "backward classes" have been defined in the Province of Madras; that may be, but that is not within my knowledge. Whereas this new term has made apprehensive the members of the scheduled castes and they have pressed here that it should be made clear that it only applies to them, if it is for their benefit, at the same time it has made the minorities apprehensive whether they are being included, as Pandit Kunzru said, whether "backward classes" would include those minorities as well, whether if they are not adequately represented any concession would be shown to them; and if they are not to be included in this phrase then what would be their fate under article 296. Unless we reconcile these two articles—296 and 10—the safeguards that are being provided in article 296 become illusory and there is apprehension in our minds as to whether that article would be to our benefit at all.

Shri K.M. Munshi : Mr. Vice-President, Sir, the criticism that has been placed before the House so far has revolved round two points. The first point is the scope of amendment No. 82 moved by my honourable friend Shri Alladi Krishnaswami Ayyar; the second is about the word "backward". I propose to deal with the first question particularly in view of what was said by my honourable friend Mr. Gupta and the comments made by my honourable friend Mr. Kamath.

I want the House to realise the scope of this article. In article 10, clause (2), the House has added the word "residence" to the various restrictions that are mentioned there.

Shri T. T. Krishnamachari (Madras: General): It has not been added, it was merely suggested.

Shri K. M. Munshi : It has been moved that it should be added; I stand corrected. We have moved an amendment to this effect implying thereby that we are going to support it and I hope we are going to get the support of the House. The amendment seeks to insert the word "residence" in clause (2); that would mean that no State, not even a local authority like a municipality or a local board, can ever make a rule that the incumbent of an office or an employee shall be a resident of that particular place. This would lead to great inconvenience. For instance, there is an amendment to insert the words "office" and "employment" separately; that would include offices which do not carry a salary. Then, take for instance the chairman of a local board. It may become necessary for a Provincial Legislature to lay down a residential qualification. The Provincial Legislature, however will not have the power to do so unless the House accepts the amendment which has been moved by my honourable friend Shri Alladi. All that amendment No. 82 seeks to do is this: if the clause with regard to residence has to be qualified and a residential qualification has to be imposed, it can only be done by the Parliament, that is by the Central Legislature. The reason of this change is that there should be uniformity with regard to this qualification throughout the whole country and that this provision should not be abused by some Legislature by imposing an impossible residential qualification.

The second difficulty which evidently has been present before the minds of some of the Members of the House is with regard to the word "State". I would like to draw the attention of the House to the different meanings of the word "State" used in the Constitution. The amendment says, "Any State for the time being specified in Schedule I". So we have to find the meaning of the word "State". I may now refer to article 1 which says:—

> "India shall be a Union of States.
> The States shall mean the States for the time being specified in Parts I, II and III of the First Schedule".

Now, if you go to the First Schedule, the Schedule is headed "State and Territories". So far as the First Schedule is concerned, Parts I, II and III refer to the States organised into a separate autonomous Government; while the territories are described in Part IV—Andaman and Nicobar Islands. Therefore, the words "Any State for the time being specified in the First Schedule" would cover only the States mentioned in Parts I, II and III but would not include the Andaman and Nicobar Islands.

Some difficulty has been felt by one or two members with regard to the definition of the word "States".

Shri H. V. Kamath : May I draw my learned friend Mr. Munshi's attention to the language used in the First Schedule? Part I refers to "territories" as well—"the territories known immediately before the commencement of this Constitution as the Governors' Provinces". The word "territory" is used there and not merely in connection with Andaman and Nicobar Islands. In Parts I, II, and IV the word employed is "territory".

Shri K. M. Munshi : If the Honourable Member is good enough to follow the submissions which I am making, I am sure he will be convinced, unless he is determined not to be convinced, in which case it is a different matter.

Shri H. V. Kamath : The boot, Sir, is on the other leg.

Shri K. M. Munshi : What I am saying is, if you look at the words of article 1, it says: "The States shall mean the States, &c.". These do not include the Central Government of the Union. It only means the autonomous States

[Shri K. M. Munshi]

which are mentioned in Parts I, II and III. As regards Part IV you will find in clause 3, sub-clause (2)—"the territories for the time being specified in Part IV of the First Schedule. . . . ." Therefore Nicobar Islands are not a State within the meaning of article 1. They are a territory. These territories are not governed by any legislature of their own nor are they a State with any autonomous powers. They are directly controlled by the Centre and the Centre cannot make a distinction with regard to its own services between a resident of one province and another. It must treat every citizen equally. The scheme of this amendment therefore, if it is seen in this light, is that with regard to the States in Parts I, II and III and in respect of any office under such States, a residential qualification can be imposed by the legislature.

The other difficulty was in regard to article 7. The article uses the words "the State". They are almost made into a term of art and apply only to the words "the State" used in Part III, that is for the purpose of Fundamental rights. It has no application to either the Schedule or to the States falling within article 1. Therefore, when the amendment under discussion says "any State" it cannot mean 'the State' as defined in article 7. I submit this amendment makes it perfectly clear that it is for the purpose of services under the States mentioned in Part I, II and III that the Central Legislature can enact a legislation, not with regard to any part of the territory which is directly controlled by the Central Government. It would be quite wrong in principle, I submit, that the Central Government should make distinctions between the residents of one province and another. Therefore, the amendment as it stands, I submit, is perfectly correct.

Shri H. V. Kamath : Mr. Vice-President, if I heard my friend a right, he did say just now that the words "any State" refers to only Parts I, II and III of the first Schedule. Then, why not say specifically and definitely in this amendment—"any State for the time being specified in Part I of the First Schedule to III" and be done with it?

Shri K. M. Munshi : I may humbly point out to my friend that the heading of the First Schedule is "the States and Territories of India" under articles 1 and 4, and Nicobar Islands are territories; they are not States. Therefore, it is perfectly clear to any one who compares the two articles. I cannot add any further explanation to what I have given.

Shri H. V. Kamath : If the wise men of the Drafting Committee think so, and as ultimately they will have their own way in regard to this amendment right or wrong, I do not want to press this point.

Shri K. M. Munshi : The meaning as I understand it,—and I hope I have made it clear to the House—is perfectly clear and requires no further comment on my part.

The other point that has been raised—of course, it will be dealt with exhaustively by my Honourable friend Dr. Ambedkar when he replies generally—is about the use of the word "backward." There is one point of view which I would like to place before the House. I happen not to belong to the Scheduled Castes; and I am putting that point of view, which possibly may come better from me than my Honourable friend Dr. Ambedkar. Certain members of the Scheduled Castes have expressed a doubt whether by the use of the word "backward classes" their rights or privileges or opportunities will be curtailed in any manner. I cannot imagine for the life of me how, after an experience of a year and a half of the Constitutent Assembly any honourable Member of the Scheduled Castes should have a feeling that they will not be included in the backward classes so long as they are backward. I cannot also imagine a time when there is any backward class in India which does not include the Scheduled Caste. But

the point I want to draw the attention of these Members to is this. Look at what has been going on in this House for the last year and a half. Take article 11. From the first time the draft was put before the sub-committee of the Minorities Committee—the Fundamental Rights Committee—there has not been a single member of the non-Scheduled Castes who has ever raised any objection to it. On the contrary, we members who do not belong to the Scheduled Castes, have in order to wipe out this blot on our society, been in the forefront in this matter. Not only that, but article 296 and even this particular proviso has been put in and supported fully by members of other communities and have been supported by the whole House. There need, therefore, be no fear that the House, as constituted at present or hereafter, will ever make a distinction or discriminate against the Scheduled Castes. That fear, I think, is entirely unfounded. What we want to secure by this clause are two things. In the fundamental right in the first clause we want to achieve the highest efficiency in the services of the State—highest efficiency which would enable the services to function effectively and promptly. At the same time, in view of the conditions in our country prevailing in several provinces, we want to see that backward classes, classes who are really backward, should be given scope in the State services; for it is realised that State services give a status and an opportunity to serve the country, and this opportunity should be extended to every community, even among the backward people. That being so, we have to find out some generic term and the word "backward class" was the best possible term. When it is read with article 301 it is perfectly clear that the word "backward" signifies that class of people—does not matter whether you call them untouchables or touchables, belonging to this community or that,—a class of people who are so backward that special protection is required in the services and I see no reason why any member should be apprehensive of regard to the word "backward."

Pandit Hirday Nath Kunzru : This is begging the question. To argue like this is to argue in a circle.

Shri K. M. Munshi : Well, I have not been able to trace the circle so far, in spite of my learned friend's attempt to make me do it.

An Honourable Member : Who are those backward classes?

Shri K. M. Munshi : Article 301 makes it clear that there will be a Commission appointed for the purpose of investigating what are backward classes. Some reference has been made to Madras. I may point out that in the province of Bombay for several years now, there has been a definition of backward classes, which includes not only Scheduled Castes and Scheduled Tribes but also other backward classes who are economically, educationally and socially backward. We need not, therefore, define or restrict the scope of the word 'backward' to a particular community. Whoever is backward will be covered by it and I think the apprehensions of the Honourable Members are not justified.

Shri T. T. Krishnamachari : Mr. Vice-President, Sir, I am afraid I am in a position of disadvantage, coming as I do after Mr. Munshi, whom the House knows as a very learned lawyer. I now see that his technique in advocacy is to confuse the judge, as—if I had heard him a right—he must have confused the minds of those Members of this House who had some doubts in regard to the provisions of article 10. Sir, I was reading recently in a newspaper the comments on this Constitution by a celebrated authority—Prof. Ivor Jennings. Vice-Chancellor of the Ceylon University—and he characterises this chapter of fundamental rights as a paradise for lawyers. And, as a piece of loose drafting, article 10 takes the palm. My own view, if I may be permitted to state it, is that this article had better not find a place in this Chapter on Fundamental Rights.

Let me take clause (1): "There shall be equality of opportunity for all citizens in matters of employment under the State." What class of citizens? Literates?

[Shri T. T. Krishnamachari]

Illiterates? Could an illiterate file a suit before the Supreme Court alleging that he has been denied equality of opportunity? This is not my own view. This is a statement of the view which I found expressed in Professor Jennings' criticism.

I now move on to clause (2). I am afraid this House has been put to a lot of trouble merely because of the attempt to accommodate my Honourable Friend Shri Jaspat Roy Kapoor by including the word 'residence' in this clause after the word 'birth'. This has been beginning of all the trouble. We have had an amendment by Shri K. M. Munshi and another by Shri Alladi Krishnaswami Ayyar. Is it at all necessary to include the word 'residence?' I put it to the House that it is not necessary, because if there is discrimination because of 'residence' as there may be, you are not going to cover it up by putting it in here and taking it out in clause 2 (a).

An Honourable Member : Delete 2 (a) then.

Shri T. T. Krishnamachari : That is a matter for the House. But I suggest to the House that we can be impartial in this matter. We shall deny Mr. Jaspat Roy Kapoor the right to put in 'residence' and we shall deny Shri Alladi Krishnaswami Ayyar the occasion to bring in an explanatory sub-clause which would whittle down the concession given as much as possible.

Now let us turn to the wording of the particular amendment moved by Shri Alladi Krishnaswami Ayyar on which my Honourable Friend Mr. Munshi dilated at length. Sir, as I said before, I am not presuming to give any advice on the matter. Let us see what the Parliament is going to do? Is it going to pass a comprehensive law covering the needs of all the States, all the local bodies, all the village panchayats (which will also be States under the definition in Article 7) and all the universities? Or, is it going to enact fresh legislation as and when occasion arises and as and when a particular local body or university or village panchayat asks for special exemption? Nothing is known as to what is naturally contemplated. We do not know what procedure is going to be laid down for this purpose, and this clause is so beautifully vague that we do not know whether Parliament is at all going to be moved in the matter for a comprehensive piece of legislation. Even then what is the type of legislation it could enact?

The proposal of my friend Shri Jaspat Roy can be nullified if Parliament decides that there should be residence of at least ten years before a person can qualify for an officer in the area. Or, is Parliament going to put down one year or is it going to cover the position of refugees by putting in six months or nothing at all? My own view is that, instead of putting in a clause like 2 (a) which is so vague,—the doubt raised by my friend Mr. Kamath is quite right—we can safely trust the good sense of Parliament. We are leaving the whole thing to the good sense of Parliament, the legislatures, the Supreme Court and the advocates who will appear before that Court when we enact this Constitution in the manner in which it has been presented to us. I am afraid there must be some region where you must leave it to the good sense of some people, because we are here trying to prevent the good sense of people from nullifying the ideas which we hold today.

Sir, the amendment of Shri Alladi Krishnaswami Ayyar says: ".....under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment." I cannot really understand where any State comes in here, even after hearing the very able advocacy and admirable advocacy of Shri Munshi in support of the amendment. I suggest that both the amendments be dropped. If any particular State disregards our views and insists on residential qualification it would not matter very much.

I now come to clause (3). Quite a number of friends objected to the word 'backward' in this clause. I have no doubt many of them have pointed out that

when this House took a decision in this regard in this particular matter on a former occasion the word 'backward' did not find a place. It was an after-thought which the cumulative wisdom of the Drafting Committee has devised for the purpose of anticipating the possibility of this provision being applied to a large section of the community.

May I ask who are the backward class of citizens? It does not apply to a backward caste. It does not apply to a Scheduled caste or to any particular community. I say the basis of any future division as between 'backward' and 'forward' or non-backward might be in the basis of literacy. If the basis of division is literacy, 80 per cent. of our people fall into the backward class citizens. Who is going to give the ultimate award? Perhaps the Supreme Court. It will have to find out what the intention of the framers was as to who should come under the category of backward classes. It does not say 'caste.' It says 'class.' Is it a class which is based on grounds of economic status or on grounds of literacy or on grounds of birth? What is it?

My honourable Friend Mr. Munshi thinks that this word has fallen from heaven like manna and snatched by the Drafting Committee in all their wisdom. I say this is a paradise for lawyers. I do not know if the lawyers who have been on the Committee have really not tried to improve the business prospects of their clan and the opportunities of their community or class by framing a constitution so full of pitfalls.

Shri K. M. Munshi : Well, my honourable friend can attempt to become a lawyer.

Shri T. T. Krishnamachari: I am afraid I may have to, when people like Mr. Munshi desert the profession for other more lucrative occupations. If my friend wants me to say something saucy I can tell him that I could attempt that and do some justice to it.

Shri K. M. Munshi : You can, I know.

Shri T. T. Krishnamachari : I must apologise to you, Mr. Vice-President, for carrying on a conversation with Mr. Munshi notwithstanding the fact that he has been provocative. Anyhow the subject is not one which merits such sallies.

Sir, coming back to the merits of clause (3) my feeling is that this article is very loosely worded. That the word 'backward' is liable to different interpretations is the fear of some of my friends, though I feel that there is no need for such fear, because I have no doubt it is going to be ultimately interpreted by the Supreme authority on some basis, caste, community, religion, literacy or economic status. So I cannot congratulate the Drafting Committee on putting this particular word in; whatever might be the implication they had in their mind, I cannot help feeling that this clause will lead to a lot of litigation.

Sir, before I sit down I would like to put before the House a suggestion not to block the issue further either by admitting the amendment of Shri Jaspat Roy Kapoor or, as as equel to it, the amendment of Shri Alladi Krishnaswami Ayyar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am going to say at the outset, before I deal with the specific questions that have been raised in the course of the debate, that I cannot accept amendment No. 334 moved by Mr. Misra; nor can I accept the two amendments moved by my friend, Mr. Naziruddin Ahmad, Nos. 336 and 337. I am prepared to accept the amendment of Mr. Imam No. 338, as amended by amendment No. 77 moved by Mr. Ananthasaynam Ayyangar. I am also prepared to accept the amendment of Mr. Kapoor, *viz.,* No. 340, as amended by amendments Nos. 81 and 82 moved by my friends Mr. Munshi and Mr. Alladi Krishnaswami Ayyar.

[The Honourable Dr. B. R. Ambedkar]

I do not think that I am called upon to say anything with regard to amendments Nos. 334, 336 and 337. Such observations, therefore, as I shall make in the course of my speech will be confined to the question of residence about which there has been so much debate and the use of the word "backward" in clause (3) of article 10. My friend, Mr. T. T. Krishnamachari, has twitted the Drafting Committee that the Drafting Committee, probably in the interests of some members of that Committee, instead of producing a Constitution, have produced a paradise for lawyers. I am not prepared to say that this Constitution will not give rise to questions which will involve legal interpretation or judicial interpretation. In fact, I would like to ask Mr. Krishnamachari if he can point out to me any instance of any Constitution in the world which has not been a paradise for lawyers. I would particularly ask him to refer to the vast store house of law reports with regard to the Constitution of the United States, Canada and other countries. I am therefore not ashamed at all if this Constitution hereafter for purposes of interpretation is required to be taken to the Federal Court. That is the fate of every Constitution and every Drafting Committee. I shall therefore not labour that point at all.

Now, with regard to the question of residence. The matter is really very simple and I cannot understand why so intelligent a person as my friend Mr. T. T. Krishnamachari should have failed to understand the basic purpose of that amendment.

Shri T. T. Krishnamachari: For the same reason as my honourable Friend had for omitting to put that word originally in the article.

The Honourable Dr. B. R. Ambedkar: I did not quite follow. I shall explain the purpose of this amendment. (It is the feeling of many persons in this House that, since we have established a common citizenship throughout India, irrespective of the local jurisdiction of the provinces and the Indian States, it is only a concomitant thing that residence should not be required for holding a particular post in a particular State because, in so far as you make residence a qualification, you are really subtracting from the value of a common citizenship which we have established by this Constitution or which we propose to establish by this Constitution. Therefore in my judgment, the argument that residence should not be a qualification to hold appointments under the State is a perfectly valid and a perfectly sound argument.) At the same time, it must be realised that you cannot allow people who are flying from one province to another, from one State to another, as mere birds of passage without any roots, without any connection with that particular province, just to come, apply for posts and, so to say, take the plums and walk away. Therefore, some limitation is necessary. It was found, when this matter was investigated, that already today in very many provinces rules have been framed by the provincial governments prescribing a certain period of residence as a qualification for a post in that particular province. Therefore the proposal in the amendment that, although as a general rule residence should not be a qualification, yet some exception might be made, is not quite out of the ordinary. We are merely following the practice which has been already established in the various provinces. However, what we found was that while different provinces were laying down a certain period as a qualifying period for posts, the periods varied considerably. Some provinces said that a person must be actually domiciled. What that means, one does not know. Others have fixed ten years, some seven years and so on. It was therefore felt that, while it might be desirable to fix a period as a qualifying test, that qualifying test should be uniform throughout India. Consequently, if that object is to be achieved, *viz.,* that the qualifying residential period should be uniform, that object can be achieved only by giving the power to Parliament and not giving it to the local units, whether provinces

or States. That is the underlying purpose of this amendment putting down residence as a qualification.

With regard to the point raised by my friend, Mr. Kamath, I do not propose to deal with it because it has already been dealt with by Mr. Munshi and also by another friend. They told him why the language as it now stands in the amendment is perfectly in accord with the other provisions of this Constitution.

Now, Sir, to come to the other question which has been agitating the members of this House, *viz.*, the use of the word "backward" in clause (3) of article 10, I should like to begin by making some general observations so that members might be in a position to understand the exact import, the significance and the necessity for using the word "backward" in this particular clause. If members were to try and exchange their views on this subject, they will find that there are three points of view which it is necessary for us to reconcile if we are to produce a workable proposition which will be accepted by all. Of the three points of view, the first is that there shall be equality of opportunity for all citizens. It is the desire of many Members of this House that every individual who is qualified for a particular post should be free to apply for that post, to sit for examinations and to have his qualifications tested so as to determine whether he is fit for the post or not and that there ought to be no limitations, there ought to be no hindrance in the operation of this principle of equality of opportunity. Another view mostly shared by a section of the House is that, if this principle is to be operative—and it ought to be operative in their judgment to its fullest extent—there ought to be no reservations of any sort for any class or community at all, that all citizens, if they are qualified, should be placed on the same footing of equality so far as the public services are concerned. That is the second point of view we have. Then we have quite a massive opinion which insists that, although theoretically it is good to have the principle that there shall be equality of opportunity, there must at the same time be a provision made for the entry of certain communities which have so far been outside the administration. As I said, the Drafting Committee had to produce a formula which would reconcile these three points of view, firstly, that there shall be equality of opportunity, secondly that there shall be reservations in favour of certain communities which have not so far had a 'proper look-in' so to say into the administration. If honourable Members will bear these facts in mind—the three principles, we had to reconcile,—they will see that no better formula could be produced than the one that is embodied in sub-clause (3) of article 10 of the Constitution; they will find that the view of those who believe and hold that there shall be equality of opportunity, has been embodied in sub-clause (1) of Article 10. It is a generic principle. At the same time, as I said, we had to reconcile this formula with the demand made by certain communities that the administration which has now—for historical reasons—been controlled by one community or a few communities, that situation should disappear and that the others also must have an opportunity of getting into the public services. Supposing, for instance, we were to concede in full the demand of those communities who have not been so far employed in the public services to the fullest extent, what would really happen is, we shall be completely destroying the first proposition upon which we are all agreed, namely, that there shall be an equality of opportunity. Let me give an illustration. Supposing, for instance, reservations were made for a community or a collection of communities, the total of which came to something like 70 per cent of the total posts under the State and only 30 per cent are retained as the unreserved. Could anybody say that the reservation of 30 per cent as open to general competition would be satisfactory from the point of view of giving effect to the first principle, namely, that there shall be equality of opportunity? It cannot be in my judgment. Therefore the seats to be reserved,

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if the reservation is to be consistent with sub-clause (1) of Article 10, must be confined to a minority of seats. It is then only that the first principle could find its place in the Constitution and effective in operation. If honourable Members understand this position that we have to safeguard two things namely, the principle of equality of opportunity and at the same time satisfy the demand of communities which have not had so far representation in the State, then, I am sure they will agree that unless you use some such qualifying phrase as "backward" the exception made in favour of reservation will ultimately eat up the rule altogether. Nothing of the rule will remain. That I think, if I may say so, is the justification why the Drafting Committee undertook on its own shoulders the responsibility of introducing the word 'backward' which, I admit, did not originally find a place in the fundamental right in the way in which it was passed by this Assembly. But I think honourable Members will realise that the Drafting Committee which has been ridiculed on more than one ground for producing sometimes a loose draft, sometimes something which is not appropriate and so on, might have opened itself to further attack that they produced a Draft Constitution in which the exception was so large, that it left no room for the rule to operate. I think this is sufficient to justify why the word 'backward' has been used.

With regard to the minorities, there is a special reference to that in Article 296, where it has been laid down that some provision will be made with regard to the minorities. Of course, we did not lay down any proportion. That is quite clear from the section itself, but we have not altogether omitted the minorities from consideration. Somebody asked me: "What is a backward community"? Well, I think any one who reads the language of the draft itself will find that we have left it to be determined by each local Government. A backward community is a community which is backward in the opinion of the Government. My honourable friend, Mr. T. T. Krishnamachari asked me whether this rule will be justiciable. It is rather difficult to give a dogmatic answer. Personally I think it would be a justiciable matter. If the local Government included in this category of reservations such a large number of seats; I think one could very well go to the Federal Court and the Supreme Court and say that the reservation is of such a magnitude that the rule regarding equality of opportunity has been destroyed and the court will then come to the conclusion whether the local Government or the State Government has acted in a reasonable and prudent manner. Mr. Krishnamachari asked: "Who is a reasonable man and who is a prudent man? These are matters of litigation". Of course, they are matters of litigation, but my honourable Friend, Mr. Krishnamachari will understand that the words "reasonable persons and prudent persons" have been used in very many laws and if he will refer only to the Transfer of Property Act, he will find that in very many cases the words "a reasonable person and a prudent person" have very well been defined and the court will not find any difficulty in defining it. I hope, therefore that the amendments which I have accepted, will be accepted by the House.

Mr. Vice-President : I am now going to put the amendments to vote, one by one.

The Honourable Dr. B. R. Ambedkar : I am sorry I forgot to say that I accept amendment No. 342.

Mr. Vice-President : The question is:—

"That in clause (2) of article 10, for the words 'on grounds only' the words 'on grounds' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That clauses (2), (3) and (4) of article 10 be deleted."

The motion was negatived.

Mr. Vice-President : The question is:

"That for clause (2) of article 10, the following clause be substituted:—

"(2) Every citizen shall be eligible for office under any State irrespective of his religion, caste, sex, descent or place of birth."

The motion was negatived.

Mr. Vice-President : I shall put to vote amendment No. 338 as amended by No. 77 of List No. 1 which has already been accepted by the Chairman of the Drafting Committee. The question is:—

"(i) That in clause (1) of article 10, for the words 'in matters of employment', the words 'in matters relating to employment or appointment to office' be substituted."

(ii) That in clause (2) of article 10, after the words 'ineligible for any' the words 'employment or' be inserted."

The motion was adopted.

Mr. Vice-President : The question is:

"That in clause (2) of article 10, after the words 'place of birth' the words 'in India' be added."

The motion was negatived.

Mr. Vice-President : I will now put amendment No. 340 as modified by amendment No. 81 of List No. III to the vote.

Shri H. V. Kamath : I submit, Sir, that amendments 81 and 82 will have to be put to the vote first.

Mr. Vice-President : There is no difference so far as I can see in regard to amendment No. 81 and if you insist, I am prepared to put it separately. I would like to carry the House with me, so long as it is legitimate.

Shri H. V. Kamath : I think it would be better, but I do not insist.

Mr. Vice-President : You do not insist. Then let me proceed in my own inadequate way.

Mr. Vice-President : The question is:

"That in clause (2) of article 10, after the word 'birth' the word 'residence' be inserted."

The motion was adopted.

Mr. Vice-President : The question is:

That after clause (2) of article 10, the following new clause be inserted:—

"(2a) Nothing in this article shall prevent Parliament from making any laws prescribing in regard to a class or classes of employment or appointment to an office under any State for the time being specified in the First Schedule or any local or other authority within its territory, any requirement as to residence within that State prior to such employment or appointment."

The motion was adopted.

Mr. Vice-President : The question is:

"That in clause (2) or article 10, after the word 'ineligible' the words 'or discriminated against' be inserted."

The motion was adopted.

Mr. Vice-President : The question is:

That clause (3) of article 10 be deleted.

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (3) of article 10, for the words 'shall prevent the State from making any provision for the reservation' the words 'shall, during a period of ten years after the commencement of this Constitution, prevent the State from making any reservation' be substituted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (3) of article 10, the word 'backward' be omitted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (4) of article 10, after the words 'in connection with' the word 'managing' be added, and the words 'or denomination' be deleted."

The amendment was negatived.

Mr. Vice-President : I shall now put the article as a whole as amended by amendment No. 338, (as modified by amendment No. 77), as amended by amendment No. 340 as modified by amendments numbers 81 and 82 of list III, and as further amended by amendment No. 342. The question is:

That this Article in this modified form stand part of the Constitution.

The motion was adopted.

Article 10, as amended, was added to the Constitution.

Article 12

Mr. Vice-President : We come to Article 12.

An Honourable Member : What about Article 10-A, Sir?

Mr. Vice-President : So far as our records show, that was finished. That was not moved.

The motion before the House is:

"That article 12 form part of the Constitution."

The first amendment is No. 383, standing in the name of Pandit Lakshmi Kanta Maitra and others.

(Amendment No. 383 was not moved.)

Mr. Vice-President : Amendment No. 384 is out of order.

(Amendment No. 385 was not moved.)

Mr. Vice-President : Amendments Nos. 386 and 392 may be considered together. I can allow amendment No. 386 to be moved. It stands in the name of Shri Kamleshwari Prasad Yadav.

(Amendments numbers 386 and 392 were not moved.)

Mr. Vice-President : Amendments Nos. 387 and 394 are of similar import. I shall allow amendment number 387 to be moved. One thing more: before you speak, I want to know whether Mr. A. K. Menon in whose name amendment No. 394 stands, wants to press it.

Shri A. K. Menon (Madras : General) : No, Sir.

Shri T. T. Krishnamachari : Sir, I move:

"That in clause (1) of article 12, after the word "title" the words 'not being a military or academic distinction' be inserted."

Sir, article 12 clause (1) will read, as amended, as follows:

"No title not being a military or academic distinction shall be conferred by the State."

The history of this particular article the Members of the House know very well. Generally, public opinion has been against any titles being granted. The House is also aware that consequent on India becoming independent, several people who had accepted titles from our British Rulers in the past had given up their titles, though some of them do retain them still. There has been a proposal at one stage that it is the intention of the members of the Drafting Committee to exclude only hereditary titles or other privileges of birth; but Dr. Ambedkar has chosen not to move it. Actually, if he had moved it, it would have made the position of those people who did not have any hereditary titles, but resigned their titles with the advent of independence, very difficult. Then, it would mean that the Government could grant titles like Dewan Bahadur, something analogous to knighthood, and so on. It would put those people who have been patriotic enough to resign their titles at the time that we got independence in a very invidious position.

Even now, in my view, the article is not complete; because, without a specific non-recognition of titles already granted by the British, those people who have been good enough to resign their titles have no benefit. Some have resigned their titles in order to get jobs; and they have got jobs. Other people have resigned; and they have got nothing out of it. Some people have kept their titles and those titles are recognised by the present Government. It makes the position of those people who have resigned their titles very sad. It may probably be that in course of time the Government will refuse to recognise those titles. I know the one Paper which is very near to the Government refuses to recognise such titles. Personally, I think, if the House would permit me to make a personal remark, from my point of view, the retention of titles is beneficial. Here is an honourable Member of the House who bears the same name as mine. He even went to England along with me. He is a titled gentleman; I am not and that helps to avoid confusion and I am glad he retained his title. That is by the way. What I really mean by this amendment is that certain type of titles has to be permitted. For instance, honourable Members of this House know that the Government have decided on three types of Military distinction to be granted in the future Mahavir Chakra, Parama Vir Chakra and Vir Chakra. Please do not confuse this with the name of our friend Mahabir Tyagi, a very distinguished Member of this House, to whom the title was given by his parents. In course of time, these Vir Chakras will become Bir Chakras. This amendment is moved to make provision for these Military distinctions.

In regard to academic distinctions, you may ask, academic distinctions are not conferred by the State. It may probably be that, some time later, the State might be willing to revive titles like Mahamahopadhyaya which will probably be classed as academic.

Even so, in consonance with the definition of State in article 7, the University becomes a State and no one in the House can say, that the University is something completely divorced from State. So much so, the titles granted by Universities or academic institutions have to be provided for as one cannot completely exclude it from the scope of clause (1) of article 12 as it stands now. The House might ask whether those titles earned by us by sitting for an examination however insignificant it might be like mine or however big it might be like Dr. Ambedkar's will those titles come under the scope of article 12 because the holder had to sit for an examination and get it. These will not come under article 12. But there are titles which are *Honoris Causa*. For instance the House knows that our Prime Minister, Deputy Minister, Ministers and Governor-General are being showered with Doctorates wherever they go and wherever there happens to be a mushroom University. To provide for contingencies of that sort and also so that when other Members of the House

[Shri T. T. Krishnamachari]

become Ministers they might also get these titles, we are providing by this amendment that academic distinctions should be excluded from the scope of this sub-clause. I hope the House fully understands the meaning of this amendment, which in my view takes stock of things to come and provides for them. I hope the House will accept my amendment.

Mr. Vice-President : Amendments Nos. 388, 389, first part of 390, 391, 395 to 397 are of similar import. 389 may be moved.

Shri Loknath Misra : Sir, I beg to move:

"That in clause (1) of article 12, after the words "be conferred" the words "or recognised" be inserted."

Sir, this is a small amendment. I beg to submit that if you are going to abolish all titles, it is also proper that those people who have already titles rightly or wrongly should no more be recognized. We know that titles are appendages and titles give a different view to the man and we know instances where people have got titles which they do not deserve and the entitled gentlemen belies the import of the title. I therefore submit that we should not only abolish all titles, we should also cease to recognise any title that has been conferred, but recognised by none of us.

Mr. Vice-President : I would like to know whether the mover of amendment No. 388 wants it to be put to vote.

Shri H. V. Kamath: Yes, Sir.

Mr. Vice-President : No. 390 first part. I want to know whether this should be put to vote.

Prof. K. T. Shah: Yes.

Mr. Vice-President : 391 is the same. 393, 396 and 397 are not moved. 390 (second part) is disallowed as being a verbal amendment. I can allow 398, 399 and 400 to be moved.

(Nos. 398 and 399 were not moved).

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That for clause (2) of article 12 the following clause be substituted:—

"(2) No title conferred by any foreign State on any citizen of India shall be recognised by the State."

This word 'the' before "State" is a consequential change. Sir, the clause which this amendment seeks to replace runs thus:—

"No citizen of India shall accept any title from any foreign State."

What is prohibited by the original clause is the 'acceptance' of a title. I would ask: if anybody accepts any foreign title, what is the penalty which is provided? No penalty is provided for accepting it. The State has no means of giving effect to this clause. If anybody accepts a title from a foreign State, what are you going to do—send him to rigorous imprisonment for six months?

The Honourable Dr. B. R. Ambedkar : The State shall not recognize it.

Mr. Naziruddin Ahmad : I am grateful for the interruption. My amendment is exactly this that no title conferred by any foreign State on the citizens of India shall be recognised by the State. The honourable Member Dr. Ambedkar has stated very kindly that the State shall not recognize it. That is really the form in which it should be stated. Supposing any title is conferred upon any honourable Member here by a foreign State and if he accepts it, you have no means of effecting a compliance with clause (2). All that you can do as has been rightly pointed out by Dr. Ambedkar is that you do not recognise

it; and that is the form in which this amendment stands. I do not think any further authority is necessary than the interjection of Dr. Ambedkar to support my amendment.

(Amendments Nos. 401, 402 and 403 were not moved.)

Shri Algu Rai Shastri (United Provinces: General): *[I am not moving this amendment because a similar amendment was moved earlier by Shri Krishnamachari and I agree with him. I, therefore, do not move my amendment.]

Mr. Vice-President : 404 is not moved. 405, 407, 410 and 411 are of similar nature. I rule that amendment No. 405 may be moved.

(Amendments Nos. 405, 407, 410, 411 and 406 were not moved.)

Mr. Vice-President : Amendment Nos. 408 and 409 are verbal ones and therefore I disallow them. Now for general discussion. Mr. Kamath.

Shri H. V. Kamath : Mr. Vice-President, Sir, with your permission, I want to say a few words in support of the amendment.

Mr. Vice-President : I can allow you discussion on the clause as a whole, but cannot allow you to speak about your own amendment.

Shri H. V. Kamath : With your permission, I want to refer to the amendment of some other member. I want to say something in support of the amendment moved by my friend Mr. Lokanath Misra. But before I come to that, I would like to say one or two words about the doubt or difficulty raised by my friend Mr. Naziruddin Ahmad in the course of his motion on amendment No. 400. He wanted to know if a member of the House, or for the matter of that, if a citizen of India, is invested with a title by any foreign State, what will happen? Shall we sentence him to rigorous imprisonment? But I say the remedy is easy. We can say that the citizen who accepts that title forfeits his citizenship of India. Such a remedy is open to us, in accordance with the provision of this article.

Mr. Naziruddin Ahmad : But there is no provision to that effect.

Shri H. V. Kamath : I suppose it will flow from the existing provision.

Now, coming to the amendment which was moved by Mr. Misra, and which I am going to support, the amendment says that titles should neither be conferred nor recognized by the State. I think, it is a very important provision in the new set-up of our country. It is one thing to say that titles should not be conferred and quite another thing to say that titles shall not be recognized. Unfortunately, Sir, even today in our country, even after the British have quitted our country, the toys or the baubles that the British have left behind still remain with us. Of course, we cannot compel our fellow-citizens, our brethren here, to give up the titles that they might have received at the hands of their erstwhile British Masters. There may not be any compulsion. But certainly, we can see to it that the State, that is to say, the Government does not in any way recognise those titles. I will illustrate my point. In most, or at least some of the government documents, records or communiques or press-notes issued by the Government from time to time, officers of the State, including ambassadors abroad, are referred to along with their titles. If I remember a right, our Charge-d-Affaires in Paris, and our Ambassador in America, whenever their names are mentioned by the Government in a press-note or communique, their titles go along with their names. The titles are not dropped. I for one, fail to see why Government should continue to recognise or mention these titles in the course of their official communiques or notes.—I remember very well, that after the Russian Revolution, and after the revolution in Turkey 25 years ago, whatever titles had been bestowed by the former regime

*[ ] Translation of Hindustani speech.

[Shri H. V. Kamath]

were abolished and those who did not choose to give up such titles were given no importance whatsoever. The State did not refer to those titles whenever they referred to the names.

Of course, it may be argued against the amendment of Mr. Misra, that it is not possible to make this a justiciable right. But certainly, I fail to see, if clause (1) of article 12 can be made a justiciable right, why not this? I have got very serious doubts on the point whether clause (1) of article 12 can be a justiciable, fundamental right. No title shall be conferred by the State. But if the State inadvertently or in a fit of absent-mindedness or due to some other cause, does confer titles, what can be done against the State? After all, the State itself has conferred the title. Will you proceed against the State? If you can proceed against the State in that eventuality, there is no reason why the State cannot be proceeded against, if the State in any way recognises a title conferred by the erstwhile British masters. I therefore, support Mr. Misra's amendment. So far as those titles are concerned which are still with us unfortunately, and so far as those title-holders are concerned the Government of India should not recognise them in any way whatsoever in their documents or references or in any other way. If there is any legal difficulty about incorporating it as a justiciable fundamental right, I shall be happy to hear from my learned friend Dr. Ambedkar that the principle is acceptable, and if it can be embodied in the Constitution somewhere, or if it could be brought forward in Parliament by means of a special bill, to the effect that the State will not recognise titles, then I shall be happy. I also hope that in that event, my friend Mr. Misra will not press his amendment.

Shri R. K. Sidhwa (C. P. and Berar: General): Mr. Vice-President. Sir, the conferment of titles during the British regime has been so scandalous that a large section of the people of the country has always viewed it with contempt. Therefore I am very glad that in this House and everywhere outside also, today the conferment of titles is looked upon with equal contempt, and this Constitution rightly provides that there should be no titles conferred upon anyone by the State.

If you refer to clause (3) a concession has been made of a person upon whom a title is conferred by a foreign State. Sir, if our State does not recognise in our own country the conferment of titles, I really fail to understand why we should allow even a foreign State to confer a title upon one of our own citizens. I am of the opinion that the word 'title' should be omitted from the clause. It says—

> "No person holding any office of profit or trust under the State shall, without the consent of the President, accept any present, emolument, title or office of any kind from or under any foreign State."

Sir, emoluments, we can understand. Presents we can understand, but why titles? The whole object of this article is not to confer titles then why include 'title' in clause (3)? The beauty of this article is really spoilt by this little word. I support this article, but I should have preferred that foreign states also should not be allowed to confer any title on any of our countrymen.

The Honourable Dr. B. R. Ambedkar : Sir, I accept the amendment moved by my Friend Mr. T. T. Krishnamachari.

With regard to the amendment moved by my friend Mr. Naziruddin Ahmad, he wanted the word "acepted" to be substituted by the word "recognised". His argument was, supposing the citizen does accept a title. what is the penal provision in the Constitution which would nullify that act? My answer to that is very simple: that it would be perfectly open under the Constitution for

Parliament under its residuary powers to make a law prescribing what should be done with regard to an individual who does accept a title contrary to the provisions of this article. I should have thought that that was an adequate provision for meeting the case which he has put before the House.

With regard to the second point of Mr. Kamath, if I have understood him correctly, he asked whether this is a justiciable right. My reply to that is very simple: it is not a justiciable right. The non-acceptance of titles is a condition of continued citizenship; it is not a right, it is a duty imposed upon the individual that if he continues to be the citizen of this country then he must abide by certain conditions, one of the conditions is that he must not accept a title because it would be open for Parliament, when it provides by law as to what should be done to persons who abrogate the provisions of this article, to say that if any person accepts a title contrary to the provisions of article 12 (1) or (2), certain penalties may follow. One of the penalties may be that he may lose the right of citizenship. Therefore, there is really no difficulty in understanding this provision as it is a condition attached to citizenship by itself it is not a justiciable right.

Shri H. V. Kamath : My point is about recognition of existing titles by the State.

The Honourable Dr. B. R. Ambedkar : As I said in reply to my friend Mr. Naziruddin Ahmad, it is open for Parliament to take such action as it likes, and one of the actions which Parliament may take is to say that we shall not recognise these titles.

Shri H. V. Kamath : I want Dr. Ambedkar to accept the principle. Parliament can do what it likes later on.

The Honourable Dr. B. R. Ambedkar : Certainly it is just commonsense that if the Constitution says that no person shall accept a title, it will be an obligation upon Parliament to see that no citizen shall commit a breach of that provision.

The Assembly then adjourned till Half Past Nine of the Clock on Wednesday, the 1st December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 1*st December* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi at Half Past Nine of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 12—*(Contd.)*

Shri H. V. Kamath (C. P. & Berar : General): Sir, before we proceed with the business of the day, may I request you to be so good as to see that my learned friend, Shri Alladi Krishnaswami Ayyar, who is frequently called upon to give us the benefit of his sage counsel is allotted a seat somewhere in the centre of the hall, neither too much to the right nor to the left so that he may be heard and appreciated in the House?

Mr. Vice-President (Dr. H. C. Mookherjee): We shall try to meet the wishes of the House.

We finished our discussion on Article 12 and Dr. Ambedkar gave his reply. I am sorry I cannot accommodate those Members who want to reopen it. I shall now put the different amendments to the vote one after the other.

Mr. Vice-President : The question is:

"That in clause (1) of article 12, after the word 'title' the words 'not being a military or academic distinction' be inserted."

The motion was adopted.

Mr. Vice-President : The question is:

"That in clause (1) of article 12, after the words 'be conferred' the words 'or recognised' be inserted".

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 12, after the word 'State' the words 'and the State shall in no way recognize any title conferred by the British Government on any citizen of India prior to August 15, 1947' be inserted."

The motion was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 12, after the word 'conferred' the words 'or recognised' be inserted."

The motion was negatived.

Mr. Vice-President : The question is:

"That for clause (2) of article 12, the following clause be substituted. '(2) No title conferred by any foreign State on any citizen of India shall be recognised by any State.' "

The motion was negatived.

Mr. Vice-President : The question is:

"That article 12, as amended, stand part of the Constitution."

The motion was adopted.

Article 12, as amended, was added to the Constitution.

Article 13

Mr. Vice-President : We shall now take up article 13 for consideration.

Shri Damodar Swarup Seth (United Provinces : General): Sir, I beg to move:

"That for article 13, the following be substituted:

'13. Subject to public order or morality the citizens are guaranteed—

(a) freedom of speech and expression;

(b) freedom of the press;

(c) freedom to form association or unions;

(d) freedom to assemble peaceably and without arms;

(e) secrecy of postal, telegraphic and telephonic communications.

13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however, be imposed by or under a Federal Law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace.' "

Sir, article 13, as at present worded, appears to have been clumsily drafted. It makes one significant omission and that is about the freedom of the press. I think, Sir, it will be argued that the freedom is implicit in clause (a), that is, in the freedom of speech and expression. But, Sir, I submit that the present is the age of the Press and the Press is getting more and more powerful today. It seems desirable and proper, therefore, that the freedom of the Press should be mentioned separately and explicitly.

Now, Sir, this article 13 guarantees freedom of speech and expression, freedom to assemble peaceably and without arms, to form association and unions, to move freely throughout the territory of India, to sojourn and settle in any territory, to acquire and hold and dispose of property, and to practise any profession or trade or business. While the article guarantees all these freedoms, the guarantee is not to affect the operation of any existing law or prevent the State from making any law in the general interests of the public. Indeed, Sir, the guarantee of freedom of speech and expression which has been given in this article, is actually not to affect the operation of any existing law of prevent the State from making any law relating to libel, slander, defamation, sedition and other matters which offend the decency or morality of the State or undermine the authority or foundation of the State. It is therefore clear, Sir, that the rights guaranteed in article 13 are cancelled by that very section and placed at the mercy or the high-handedness of the legislature. These guarantees are also cancelled, Sir, when it is stated that, to safeguard against the offences relating to decency and morality and the undermining of the authority or foundation of the State, the existing law shall operate. This is provided for in very wide terms. So, while certain kinds of freedom have been allowed on the one hand, on the other hand, they have been taken away by the same article as I have just mentioned. To safeguard against "undermining the authority or foundation of the State" is a tall order and makes the fundamental right with regard to freedom of speech and expression virtually ineffectual. It is therefore clear that under the Draft Constitution we will not have any greater freedom of the press than we enjoyed under the cursed foreign regime and citizens will have no means of getting a sedition law invalidated, however flagrantly such a law may violate their civil rights.

Then, Sir, the expression 'in the interests of general public' is also very wide and will enable the legislative and the executive authority to act in their own way. Very rightly, Sir, Shri S. K. Vaze of the Servants of India Society while criticising this article has pointed out that if the mala fides of Government are not proved—and they certainly cannot be proved—then the Supreme Court will have no alternative but to uphold the restrictive legislation. The Draft Constitution further empowers the President, Sir, to issue

proclamations of emergency whenever he thinks that the security of India is in danger or is threatened by an apprehension of war or domestic violence. The President under such circumstances has the power to suspend civil liberty.

Now, Sir, to suspend civil liberties is tantamount to a declaration of martial law. Even in the United States, civil liberties are never suspended. What is suspended there, in cases of invasion or rebellion, is only the *habeas corpus* writ. Though individual freedom is secured in this article, it is at the same time restricted by the will of the legislature and the executive which has powers to issue ordinances between the sessions of the legislature almost freely, unrestricted by any constitutional provision. Fundamental rights, therefore, ought to be placed absolutely outside the jurisdiction, not only of the legislature but also of the executive. The Honourable Dr. Ambedkar, Sir, while justifying the limitations on civil liberties, has maintained that what the Drafting Committee has done is that, instead of formulating civil liberties in absolute terms and depending on the aid of the Supreme Court to invent the doctrine or theory of police powers, they have permitted the State to limit civil liberties directly. Now, if we carefully study the Law of Police Powers in the United States, it will be clearly seen that the limitations embodied in the Draft Constitution are far wider than those provided in the United States. Under the Draft Constitution the Law of Sedition, the Official Secrets Act and many other laws of a repressive character will remain intact just as they are. If full civil liberties subject to Police Powers, are to be allowed to the people of this country, all laws of a repressive character including the Law of Sedition will have either to go or to be altered radically and part of the Official Secrets Act will also have to go. I therefore submit that this article should be radically altered and substituted by the addenda I have suggested. I hope, Sir, the House will seriously consider this proposal of mine. If whatever fundamental rights we get from this Draft Constitution are tempered here and there and if full civil liberties are not allowed to the people, then I submit, Sir, that the boon of fundamental rights is still beyond our reach and the making of this Constitution will prove to be of little value to this country.

Mr. Vice-President : Do I understand that amendment No. 441 will not be moved? I shall not allow any discussion but I shall put it to vote. Do I understand that the mover does not intend to move this amendment?

(Amendment 441 was not moved.)

(Amendments No. 413 and No. 414 were not moved.)

Mr. Vice-President : Amendments Nos. 415 and 418. They are the same. I will allow amendment No. 415 to be moved. It stands in the names of Pandit Lakshmi Kanta Maitra and others, including Mr. Kamath.

Shri Mihir Lal Chattopadhyay (West Bengal: General): Sir, I beg to move:

"That in clause (1) of article 13, the words 'Subject to the other provisions of this article' be deleted."

Various provisos have been mentioned in this Section in clauses (2), (3), (4), (5) and (6). Therefore the words "subject to the other provisions of this article" are unnecessary.

Mr. Naziruddin Ahmad (West Bengal : Muslim): I submit that this is a drafting amendment.

Mr. Vice-President : Proceed, Mr. Chattopadhyay.

Shri Mihir Lal Chattopadhyay : Moreover, this section deals with Fundamental Rights and there should be positive enumeration of these rights and privileges at the beginning and it should not begin with provisos. Each proviso should in the natural course come afterwards. I therefore move this amendment.

(Amendment No. 419 was not moved.)

Mr. Vice-President : Then we come to amendment No. 416 standing in the name of Prof. K.T. Shah.

Prof. K. T. Shah (Bihar : General): Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 13, for the words, 'the other provisions of this article' the words 'this constitution and the laws thereunder or in accord therewith at any time in force' be substituted, and after the words 'all citizens shall have' the words 'and are guaranteed' be added."

The article, as amended, would read:

"Subject to this Constitution and the laws thereunder or in accord therewith at any time in force, all citizens shall have and are guaranteed the right" etc.

Sir, my purpose in bringing forward this amendment is to point out that, if all the freedoms enumerated in this article are to be in accordance with only the provisions of this article, or are to be guaranteed subject to the provisions of this article only, then they would amount more to a negation of freedom than the promise or assurance of freedom, because in everyone of these clauses the exceptions are much more emphasised than the positive provision. In fact, what is given by one right hand seems to be taken away by three or four or five left hands; and therefore the article is rendered nagatory in my opinion.

I am sure that was not the intention or meaning of the draftsmen who put in the other articles also. I suggest therefore that instead of making it subject to the provisions of this article, we should make it subject to the provisions of this Constitution. That is to say, in this Constitution this article will remain. Therefore if you want to insist upon these exceptions, the exceptions will also remain. But the spirit of the Constitution, the ideal under which this Constitution is based, will also come in, which I humbly submit, would not be the case, if you emphasise only this article. If you say merely subject to the provisions of this article, then you very clearly emphasise and make it necessary to read only this article by itself, which is more restrictive than necessary. I am aware it might be said that, under the rules of interpretation, the whole Constitution will have to be read together and not only one clause of it. If so, I ask where is the harm in then saying, as you have said in many other articles, "subject to the provisions of this Constitution" and "subject also to the laws in force at any time and the laws thereunder"? Those laws which have not been abrogated or abolished under this article or any other article will be enforced. Those new laws which you make in accordance with this article will also be enforced, so that all the safeguards that you wish to introduce, and which you may wish to maintain against any abuse of the freedoms guaranteed or granted by this Constitution, will be available.

Why then should we draw attention and emphasize only this article, which is more full. I repeat, of exceptions and delimitations of freedom than of freedom itself? The freedoms are curtly enumerated in 5, 6 or 7 items in one sub-clause of the article. The exceptions are all separately mentioned in separate sub-clauses. And their scope is so widened that I do not know what cannot be included as exception to these freedoms rather than the rule. In fact, the freedoms guaranteed or assured by this article become so elusive that one would find it necessary to have a microscope to discover where these freedoms are, whenever it suits the State or the authorities running it to deny them. I would, therefore, repeat that you should bring in the provisions of the whole Constitution, including its preamble, and including all other articles and chapters where the spirit of the Constitution should be more easily and fully gathered than merely in this article, which, in my judgment, runs coun-

ter to the spirit of the Constitution. Somebody described yesterday the Constitution as a paradise for lawyers. All written Constitutions, and even un-written ones, do admit themselves to legal chicanery of a very interesting type. Constitutions of Federal States are generally more so. But whether or not it was deliberately intended to be so, this particular Draft seems to be a very fertile ground for legal ingenuity to exercise. And that will, of course, be at the expense of the Community. Whether the State wins or loses, the public, the country in any case, will lose to one small section, that of the legal practitioners.

I also suggest that it would not be enough to enumerate these freedoms, and say the citizen shall have them. I would like to add the words also that by this Constitution these freedoms are guaranteed. That is to say, any exception which is made, unless justified by the spirit of the Constitution, the Constitution as a whole and every part of it included, would be a violation of the freedoms guaranteed hereby.

For instance, sub-clause (5) uses such a wide expression as to make anything come within the scope of the exception, and suffice to deny the practical operation of the freedoms that by one big clause you are supposed to guarantee. I, therefore, think that it is necessary to make the substitution I have suggested in this article, that the words "this Constitution and the laws thereunder or in accord therewith at any time in force" may be substituted for the words "the other provisions of this article" and after the words "all citizens shall have" the words "and are guaranteed" be added. I hope the amendment will prove acceptable to the House.

Mr. Vice-President : Amendment Nos. 417 and 418 are of similar import. I can allow No. 417 to be moved. This amendment stands in the name of Mr. Lari.

An Honourable Member : He is not in the House.

Mr. Vice-President : Then amendment No. 418 which stands in the name of Shri Mukut Behari Lal Bhargava.

The amendment was not moved.

Mr. Vice-President : Amendment Nos. 420, 421 and 424 are of similar import and I suggest that the House should consider them together. I suggest that amendment No. 421 be moved. This stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (a) of clause (1) of article 13, after the word 'expression'; the words 'of thought and worship; of press and publication;' be added."

so that the article as amended would read:

"Subject to the other provisions of this article, all citizens shall have the right—

(a) to freedom of speech and expression; of thought and worship; of press and publication;"

In submitting this amendment, I must confess to a feeling of amazement at the omission whether it is by oversight or deliberate. I do not know of these very essential and important items in what are known as Civil Liberties. The clause contents itself merely with the freedom of speech and of expression. I do not know what type of freedom of speech the draftsman had in mind when he adds to it the freedom of expression separately. I thought that speech and expression would run more or less parallel together. Perhaps

[Prof. K. T. Shah]

"expression" may be a wider term, including also expression by pictorial or other similar artistic devices which do not consist merely in words or in speech.

Allowing that that is the interpretation, or that is the justification for adding this word "expression", I still do not see why freedom of worship should have been excluded. I am not particularly a very worshipful man myself. Certainly I do not indulge in any overt acts of worship or adoration. But I think a vast majority of people feel the need and indulge in acts of worship, which may often be curtailed or be refused or in other words be denied unless the Constitution makes it expressly clear that those also will be included. All battles of religion have been fought—and it must be very well known to the draftsman that they are going on even now—in connection with the right of free worship. The United States itself owes its very origin to the denial of freedom of worship in their original home to the Fathers of the present Union some 300 odd years ago. That is why in most modern constitutions, the freedom of worship finds a very clear mention. I certainly feel therefore that this omission is very surprising, to say the least. Unless the Drafting Committee is in a position to explain rationally, is in a position to explain effectively why this is omitted, I for one would feel that our Constitution is lacking and will remain lacking in a most essential item of Civil Liberties if this item is omitted.

The same or even a more forceful logic applies to the other "freedom of the press, and freedom of publication." The freedom of the press, as is very well known, is one of the items round which the greatest, the bitterest of constitutional struggles have been waged in all constitutions and in all countries where liberal constitutions prevail. They have been attained at considerable sacrifice and suffering. They have now been achieved and enshrined in those countries. Where there is no written constitution, they are in the well established conventions or judicial decisions. In those which have written constitutions, they have been expressly included as the freedom of the press.

Speaking from memory, I am open to correction, although I think it would not be necessary, even the United Nations Charter gives good prominence and special mention of freedom of the press. Why our draftsmen have omitted that, I find beyond me even to imagine. I dare say they must have very good reasons why the freedom of the press has not found specific mention in their draft. But, unless and until they give the reasons and explain why it has been omitted, I feel that an amendment of the kind I am proposing is very necessary.

The Press may be liable to abuse; I feel there may have been instances where the press has gone, at least in the mind of the established authority, beyond its legitimate limits. But any curtailment of the liberty of the press is, as one of the present Ministers, who was then a former non-official member, called, a "black Act," in the last but one session of the legislature when there was an attempt to curtail the liberty of the press under certain circumstances. This endeared him at least so much to me that in spite of many differences with him. I felt he had doneyeoman service, though singly opposing even at the third reading of the Bill.

With the presence of such men in this House, I am amazed that in this Constitution a very glaring omission has taken place in the draft by leaving out the freedom of the press. I cannot imagine, why these draftsmen, so experienced and so seasoned, should have felt it desirable to leave out the freedom of the press, and leave it to the charity of the administrators of the Constitution when occasion arose to include it by convention or implication, and not by express provision. Freedom of the press, I repeat, is apt to be mis-

understood, or, at any rate, apt to be regarded as licence which you may want to curtail. There are many ways by which laws can be passed or laws can be administered whereby you can regard the liberty as verging upon licence and as such to be curtailed. To omit it altogether, I repeat, and I repeat with all the earnestness that I can command, would be a great blemish which you may maintain by the force of the majority, but which you will never succeed in telling the world is a progressive liberal constitution, if you insist on my amendment being rejected.

Mr. Vice-President : Amendment No. 420. Is it pressed?

(Mr. Naziruddin Ahmad rose in his seat to speak.)

You need not come. I only want to know whether you intend to press this, in which case, I shall put it to the vote.

Mr. Naziruddin Ahmad : Sir, I wish to speak on this.

Mr. Vice-President : You can speak in the course of the general discussion, provided, of course, you get a chance.

You have given me the power to rule out; take your seat, please; it will be put to the vote.

Mr. Naziruddin Ahmad : Without any debate, Sir?

Mr. Vice-President : Amendment No. 422.

(Shri Lakshminarayan Sahu came to the rostrum.)

You are not allowed to speak. Do you want to press it?

Shri Lakshminarayan Sahu (Orissa : General): Yes, Sir.

(Amendment No. 424 was not moved.)

Mr. Vice-President : Amendment No. 423 is disallowed.

(Amendment No. 425 was not moved.)

Mr. Vice-President : Amendment No. 426.

Giani Gurmukh Singh Musafir (East Punjab : Sikh): *[I do not wish to move my amendment, as it is covered by clause (1) of the Explanation to article 19.]

Mr. Vice-President: I cannot follow what he is saying.

An Honourable Member : He is not moving the amendment.

(Amendment No. 427 was not moved.)

Mr. Vice-President : Amendments numbers 428, 429, 430 and 432 are of similar import and are therefore to be considered together. Amendment No. 428 may be moved.

Mr. Naziruddin Ahmad : Sir, am I to move all the amendments and speak, on all of them?

Mr. Vice-President : On amendment No. 428 only.

Mr. Naziruddin Ahmad : Will all the others be put to the vote?

Mr. Vice-President : Of course.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That at the end of sub-clause (c) of clause (1) of article 13, the words 'for any lawful purpose' be inserted."

The Honourable Shri K. Santhanam (Madras : General): Sir, on a point of order, sub-clause (4) covers exactly this position in greater detail.

Mr. Naziruddin Ahmad : I had carefully thought about this objection, Sir, and I was just going to mention the difficulty of that view. That is the only reason why I have come here to move the amendment.

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* [ ] Translation of Hindustani Speech.

Mr. Vice-President : Proceed.

Mr. Naziruddin Ahmad : Sir, all that I wish to convey by means of this amendment is that the people's freedom of speech, freedom of forming associations or unions, and moving freely throughout the territory and residing in any place, should be subject to the condition that they do it for a lawful purpose.

So far as Mr. Santhanam is concerned, he does not quarrel with the principle. His contention is that these conditions are sufficiently expressed in the clauses (2),(3), (4), (5) and (6). I shall draw the attention of the House and particularly of Mr. Santhanam to sub-clause (b) of clause (1) of article 13. It gives the right to assemble 'peaceably and without arms'. The words 'peaceably and without arms' should be objectionable from the point of view of Mr. Santhanam because it may be argued that the words are unnecessary and the condition is sufficiently provided for in clause (3). I submit that the amendments which stand in my name are merely an application of this method of draftsmanship to the other sub-clauses. I submit if we have them in the sub-clauses (b), they should also be in (a), (c), (d), (e), (f) and (g). If we introduce the words "for any lawful purpose" there, they will be beyond the scope of any legislature to interfere. But if we are satisfied with clauses (2), (3), (4), (5) and (6), they can be interferred with the Legislature. So there is this difference that with the inclusion of the words in the sub-clauses as I suggest, they would be part of the Fundamental Right. That is, if any one speaks, he should do so for a lawful purpose; if the forms associations and unions, he should do it in a lawful manner, i.e., he should not join or form into a conspiracy or other forbidden things of the sort. Then if he wants to move throughout the territory of India, I think this should be also limited by the condition that it should be for a lawful purpose. No male person should enter a female compartment in railway carriage or enter into lady's dressing room: and then somebody might say "I shall reside in this Assembly Hall"; there must be limiting conditions. My point is if you insert them in sub-clauses (a), (c), (d), (e), (f) and (g), as you have already inserted specifically in sub-clause (b)—if you insert them in these sub-clauses, then they will be part of the Fundamental Right and clauses (2), (3), (4), (5) and (6) will not give any power to the legislatures to abrogate them. This is the reason which induced me to move this amendment. Sir, this point of view should be carefully considered.

(Amendments No. 431 and Nos. 433 to 437 were not moved.)

Mr. Vice-President : No. 438 and first part of 443. Mr. Kamath.

Shri H. V. Kamath : Mr. Vice-President, I move:

"That after sub-clause (g) of clause (1) of article 13 the following new sub-clause be added:

I move this amendment, as amended by my own amendment No. 79 in List No. II, which runs thus:

"That for amendment No. 438 of the List of Amendments, the following be substituted:

'That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—

(h) to keep and bear arms;

and the following new clause be added after clause (6):

(7) Nothing in sub-clause (h) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of public order, peace and tranquility, restrictions on the exercise of the right conferred by the said sub-clause.' "

Sir, I feel a little pardonable pride in moving this amendment before the House today. Considering as I do that it puts an end or brings to an end one phase of our ignominous past, the past of more than a hundred years, and

in view of the importance of this matter involved in the amendment, may I appeal to you, Sir, to give me a little latitude in the matter of time, because I want to put the case in its entirety before the House? And may I also make a personal request to Dr. Ambedkar or whoever it may be that will reply on behalf of the Drafting Committee, to pay close attention to what is going on in the House? Yesterday we found at the fag end of the day Dr. Ambedkar—perhaps he was a bit fagged out and tired—I felt that he had not followed the debate on titles.

Mr. Vice-President : I will not allow you to make any reference to what happened yesterday.

Shri H. V. Kamath : Before I come to the amendment itself may I say a word as to an important omission which has been made before article 13? I find from the Report of the Fundamental Rights Sub-Committee over which the Honourable Sardar Patel presided, the rights from 13 up to 18 have been titled or designed as the Rights of Freedom. This sub-title 'Rights of Freedom' has been omitted from the draft as presented to the Assembly now. In this report which I am reading—Report of the Committee—First Series from December 1946 to July 1947—the sub-title is 'Rights of Freedom' just before we come to article 13.

Then, Sir, I come to the amendment itself. It is common knowledge to all of us who have lived and worked in India during the last thirty years or more that this has been a universal demand emanating from all sections of the population, firstly as a protest against the degrading and humiliating Army Act passed by the British Government in the last century, and secondly, Sir, as a guarantee of the right of self-defence. This demand has been embodied in various Congress Resolutions during the last two decades. The most important Resolution and most historic, the most momentous was the Resolution on Fundamental Rights passed at Karachi. I read, Sir, from that Resolution the relevant extracts:

"This Congress is of opinion that to enable the masses to appreciate what Swaraj as conceived by the Congress will mean to them, it is desirable to state the position of the Congress in a manner easily understood by them. In order to end the exploitation of the masses, political freedom must include real economic freedom of the starving millions. The Congress, therefore, declare that any constitution.

Mark these words—any constitution.

* * * which may be agreed to on its behalf, should provide or enable the Swaraj Government to provide for the following....."

and various fundamental rights are enumerated, among them being this one—

"Every citizen has the right to keep and bear arms in accordance with Regulations and reservations made in that behalf."

I find, Sir, from this list of Fundamental Rights, adopted at the Karachi session of the Congress, almost all of them have been incorporated in this Draft Constitution, except this one, and this is a very serious omission.

I might also make an observation about this amendment, that I am in a very good company, because amendment No. 433 which is similar to my amendment has been tabled by the general Secretaries of the Congress—Shri Shankar Rao Deo and Acharya Jugal Kishore.

Mr. Vice-President : Do you suggest that it is the work of the Congress only? I thought it is the co-operative work of all the parties.

Shri H. V. Kamath : But, Sir, all will agree that the dominant party in this House is the Congress Party, and if this party is not going to stand by its past professions, if it is going to prove false to its past, and not implement its resolution of the past, what has that party come to? If the fundamental idea of this resolution passed at Karachi is to be given the go by, I ask this House, shall we not fall in the estimation of the people of the country? Sir, this demand has not been a mere demand. I very well remember that in Nagpur

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in 1923 or 1924 there was a Satyagraha movement against the Arms Act and this Satyagraha movement attracted Satyagrahis from all over-India. That went on for six months, and the Congress put its seal of approval on this Satyagraha movement against the Arms Act. Today we may say that conditions have changed and we do not want this sort of thing to be incorporated in our fundamental rights. But, Sir, I will come to that argument a little later.

I can appreciate the force of the argument that this absolute right should not be conceded today. Perhaps there is a lurking fear in the minds of those in power that the right may be abused. For that reason I have given this proviso in conformity with and in line with the other provisos which have been embodied in this article. I am personally not very much in favour of these elaborate provisos. Here again, I would like to draw the attention of the Honourable Dr. Ambedkar to pages 21 and 29 of this Report of the Committees' First Series. On page 21, we have the Report of the Fundamental Rights Sub-Committee presided over by the Honourable Sardar Patel, and later on the same report was discussed in the Assembly and modifications were made in that, and the elaborate provisos which appeared in the original report of the Fundamental Rights Committee do not find a place in the resolution on the report which was adopted by the Constituent Assembly. This perhaps needs an explanation from Dr. Ambedkar.

Reverting to the subject matter of the amendment. I have already said that I do not want to make this right absolute. That is why I have tabled this proviso, imposing restrictions in the interests of public order, peace and tranquility. It may be said that saboteurs and other elements are abroad in the country and these may abuse this privilege and take advantage of this privilege conferred upon the ordinary citizen. But may I tell the House that saboteurs and other evil elements, villains and criminals have managed and will always manage to get arms, Arms Act or no Arms Act; and it is the law-abiding citizen who has always suffered in the bargain, and it is he who has to be protected against these elements. The history of the last twelve months has proved this to us most unmistakably, that those who suffer in these criminal riots and disturbances are not the violent elements or the saboteurs, but the law-abiding citizens, and these have to be protected.

Again, the argument may be put forward that we should incorporate only such rights about which there is fear that they might be denied to the citizen. But if we examine this argument a little closely, and also this article, in the light of this argument, we will find that rights like free movement throughout India; freedom to reside and settle in any part of India, and such other rights about which there is no doubt or fear that they will be denied, have been incorporated in this article. But this one right, to keep and bear arms has not found a place in this article. If this very diluted proposal of mine, if even this very abridged freedom to bear arms is not acceptable to the House, I am afraid it will create a most unfortunate impression on our countrymen that the Government does not trust the people, that the Government has no faith in the people, that the Government is afraid of the people. It is all right. Sir, for Ministers of Government to say, "We are here to protect you". But, with security guards outside their bungalows, it is very well for them to put forward this plea. But the ordinary citizen has no armed guard about him, no guards standing outside his house. If the Government wishes to convey the impression to the people that the Government has no faith in them, that it is afraid of them, if that is the attitude of the Government, then it is welcome to say so. It will prove to the people that you are not a popular government, that you are a government which has no faith in the people. If you are a popular government, this is the least that you can do today to put an end to this ignominy of the past one hundred years.

It may be argued also that the Congress and Mahatma Gandhi and our leaders have taught us to defend ourselves by Ahimsa, and not by Himsa, by non-violence and not by violence. But, Sir, may I, in all humility remind the House that Mahatma Gandhi used to say, "Resist, defend, non-violently, if possible, but violently, if necessary. What I hate is cowardice." And this doctrine, Sir, has been propagated recently by the Honourable Sardar Patel himself who has been going about the country asking the people never to run away, never to be cowards, but to resist violently if necessary, not to run away from the assassin, from the hooligan, from the criminal. Defend yourself by all means and at all costs. I find my honourable Friend Mr. Shankar Rao Deo laughing in his seat. He is welcome to smile or laugh but I may tell him that he laughs best who laughs last. He has tabled an amendment here. I do not know whether he is serious about it. In the end I will only say that if we of the Congress party who are in a majority desire to prove true to our past, if we have the desire in us to implement all the resolutions that we have adopted in the past, if we do not want to live with the lie in our soul, I appeal to the House to accept this amendment and put an end to one of the most disgraceful phases of our ignominious past of over a hundred years.

Mr. Vice-President : May I ask whether the first part of amendment No. 443 is going to be pressed?

Shri Shankarrao Deo (Bombay : General): No, Sir.

Maulana Hasrat Mohani (United Provinces: Muslim): Sir, I want to give my wholehearted support to the motion of my honourable Friend who has just moved his amendment.....

Mr. Vice-President : May I suggest that instead of starting the general discussion we postpone it till all the amendments have been moved. We shall try our best to give the Maulana Sahib an opportunity to speak. Will he kindly resume his seat? (Laughter)

Order, order. The Maulana Sahib is perfectly within his rights if he wants to speak. I am sorry, Maulana Sahib, to ask you to go back to your seat. It is regrettable to greet an old Member of this House in this fashion.

Mr. Mohamed Ismail Sahib (Madras : Muslim): Sir, I move:

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—

'(h) to follow the personal law of the group or community to which he belongs or professes to belong.

(i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed'."

Shri C. Subramaniam (Madras: General): On a point of order, Sir, the House has already passed an article in the Part on directive principles that there should be a uniform civil code. Here the Honourable Member wants to move that everybody should have the liberty to follow the personal law of the group or community to which he belongs or professes to belong. This is going contrary to the article which has already been passed. We have already decided that as far as possible personal law should come under a uniform civil code and this amendment is against the principle of that article.

As regards the other part of the amendment, it should be discussed when we take up article 15.

Mr. Vice-President : It is no point of order. Mr. Mohammed Ismail Sahib may continue his speech.

Mr. Mohamed Ismail Sahib : It is really true that I made a similar proposal when the directive principles were under discussion. I made it clear that this question of personal law ought really to come under the chapter Fundamental Rights and I also said that I shall, when the opportunity came, move this amendment at the proper time.

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Personal law is part of the religion of a community or section of people which professes this law. Anything which interferes with personal law will be taken by that community and also by the general public, who will judge this question with some common sense, as a matter of interference with religion. Mr. Munshi while speaking on the subject previously said that this had nothing to do with religion and he asked what this had to do with religion. He as an illustrious and eminent lawyer ought to know that this question of personal law is entirely based upon religion. It is nothing if it is not religious. But if he says that a religion should not deal with such things, then that is another matter. It is a question of difference of opinion as to what a religion should do or should not. People differ and people holding different views on this matter must tolerate the other view. There are religions which omit altogether to deal with the question of personal law and there are other religions like Hinduism and Islam which deal with personal law. Therefore I say that people ought to be given liberty of following their personal law.

It was also stated by Dr. Ambedkar on the floor of this House that the question of following personal law was not immutable. There were, as a matter of fact, sections of Muslims who do not follow the personal law prescribed by Islam, but that is a different matter. It is not reasonable to say that simply because a section of people do not want to follow a certain law of a certain religion or a certain part of that religion that other people also should not follow the law and that sections of people should be compelled not to follow that part of the religion which certain other sections of the same community are not following.

That is not really reasonable, Sir, and it is really immutable to the people who follow this law and this religion, because people, as they understand it, have not got the right to change their religion as they please. There may be people who contravene their own religion, but that is a different matter and we cannot compel others also to contravene their religion. Here the question of personal law affects only the people who follow this law. There is no compulsion exercised thereby on the general community or the general public. This House will remember that on another question, which is really a religious question—I mean the question of cow-slaughter—an obligation has been placed upon other communities than the one which considers the prohibition of cow-slaughter as a religious matter. But then, Sir, respecting the views and feelings of our friends, the minority communities who have got the right and privilege of slaughtering and eating the flesh of cows have agreed to the proposal put before the House, though that is going beyond affecting one particular community alone. Here, Sir, observance of personal law is confined only to the particular communities which are following these personal laws. There is no question of compelling any other community at all.

Pandit Thakur Dass Bhargava (East Punjab: General): Is the honourable Member aware of the restrictions of cow-slaughter in Pakistan?

Mr. Vice-President : Will the honourable Member kindly address the Chair?

Mr. Mohamed Ismail Sahib: I cannot hear him properly. I do not know what my friend is trying to say.

Mr. Vice-President : Do not pay any attention to that. Will the Honourable Member continue?

Pandit Thakur Dass Bhargava: I was enquiring of the Honourable Gentleman if he knows that there is a restriction on cow-slaughter in Pakistan, in Afghanistan and in many Muhammadan countries. In India also the Muhammadan kings placed such a restriction.

Mr. Mohamed Ismail Sahib: They might have or not have made a provision of that sort. My point is that this is a question which affects a particular community, but because that community wanted to prevent that slaughter the other community, which need not prohibit that slaughter, has agreed to that proposal. But with regard to personal law, it concerns a particular community which is following a particular set of personal laws and there is no question of compelling other people to follow that law and it is the question of the freedom of the minority or the majority people to follow their own personal law. As a matter of fact, I know there are an innumerable number of Hindus who think that interference with the personal law is interference with their religion. I know, Sir, that they have submitted a monster petition to the authorities or to the people who can have any say in the matter. Therefore it is not only Muslims but also Hindus who think that this is a religious question and that it should not be interfered with. The personal law of one community does not affect the other communities. Therefore, Sir, what I urge is that the freedom of following the personal law ought to be given to each community and it will not interfere with the rights of any other community.

Again, Mr. Munshi stated that Muslim countries like Egypt or Turkey have not any provision of this sort. Sir, I want to remind him that Turkey is under a treaty obligation. Under that treaty it is guaranteed that the non-Muslim minorities are entitled to have questions of family law and personal status regulated in accordance with their usage. That is the obligation under which Turkey has been placed and that is obtaining in Turkey now.

Then again with regard to Egypt, no such question of personal law arose in that country. But what is to be noted is that whatever the minorities in that country wanted has been granted to them: in fact more than what they wanted has been granted. And if personal law had also been a matter in which they wanted certain privileges, that would also have been granted.

Then there are other countries. Yugoslavia has agreed to give this privilege to the Muslims in following their family law and personal law.

Therefore, what I am asking for is not a matter which is peculiar to myself or to the minority community in this country. It is a thing, Sir, well understood in other parts of the world also.

Sir, I also move:

"That after clause (6) of article 13, the following new clauses be added:

'(7) Nothing in the clauses (2) to (6) of this article shall affect the right guaranteed under sub-clause (h) of clause (1) of this article'."

This is consequential. The personal law is presumed to be guaranteed by the previous amendment, that is the new sub-clause (h) to clause (1) of article 13, and this clause (7) seeks to preclude any interference with the question of personal law as a result of clauses (2) to (6).

Then coming to the new clause (i), it reads thus:

"to personal liberty and to be tried by a competent court of law in case such liberty is curtailed."

This has nothing to do with the minority or the majority. It concerns itself with the right of every citizen. Personal liberty is the core of the whole freedom. It is the basis upon which the freedom of the land must be built. But here, Sir, in this bulky Constitution this question of personal liberty is left almost as an orphan. Only one mention is made of personal liberty, *i.e.,* in article 15 and it is left there, it is left to be taken care of by "procedure established by law". I do not here enter into the controversy whether it should be "by due process of law", or "by procedure established by law". But what I want to say is that only a mention has been made in the Constitution with regard to personal liberty. But personal liberty is the most fundamental of

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the fundamental rights and it ought not to be dealt with in such a cursory manner, as it has been done in the Constitution.

I request your permission to read a quotation to illustrate how the Constitutions of other countries have dealt with this all-important question of personal liberty.

Much smaller countries than India have taken a more serious and, if I may say so, a sacred view of this question. The Polish Constitution says, among other things: 'If in any case the judicial order cannot be produced immediately'—(it is only on a judicial order that a man's liberty can be curtailed)—'it must be transmitted within 48 hours of the arrest stating the reasons for the arrest. Persons who have been arrested and to whom the reasons for the arrest have not been communicated within 48 hours, in writing over the signature of judicial authorities, shall be immediately restored to liberty.'

'The laws prescribe the means of compulsion which may be employed by the administrative authority to secure the carrying out of their order.'

Then again, the same Constitution says; "No law may deprive a citizen, who is the victim of injustice or wrong, of judicial means of redress."

Sir, another State, *viz.,* Yugoslavia, in regard to this matter goes even further. It has provided:

"A man after he is informed of the reasons for the arrest or detention has got the right....."

Shri C. Subramaniam : Questions of personal liberty come only under article 15. They are irrelevant under this article. It is article 15 that deals with personal liberty thus: "No person shall be deprived of his life or personal liberty except according to procedure established by law, nor shall any person be denied equality before the law or the equal protection of the laws within the territory of India." Therefore what is the use of discussing the question of personal liberty under article 13?

Mr. Mohamed Ismail Sahib : I have already referred to this point. Of course it is mentioned there. But to say that because it is mentioned there it is necessary that the matter should be discussed only there is not correct. I am of the view that this subject is more appropriately brought under article 13 which speaks of the various freedoms of the citizen. Of these freedoms, this is the most important. Therefore there is nothing wrong in my saying that this all-important question must be brought under article 13. With that view I have tabled this amendment and I am speaking on this amendment.

Sir, my amendment, which I have moved with your permission, says that the citizen shall be guaranteed his personal liberty. As I was saying, the Constitution of Yugoslavia has provided: "No person may be placed under arrest for any crime or offence whatever save by order of a competent authority given in writing stating the charge. This order must be communicated to the person arrested at the time of arrest or within 24 hours of the arrest. An appeal against the order for arrest may be lodged in the Competent Court within three days. If no appeal has been lodged.—(this is important)—'within this period, the police authorities must as a matter of course communicate the order to the competent court within 24 hours following. The court shall be bound to confirm or annul the arrest within 2 days of the communications of the order and its decision shall be given effect forthwith. Public officials who infringe this provision shall be punished for illegal deprivation of liberty' ".

Sir, ours is a bulky Constitution. Our friends congratulated themselves in having produced the bulkiest Constitution in the world. And this Constitution from which I read out an extract just now contains only 12 articles. It is a much smaller Constitution than ours and yet in the matter of personal

liberty it has made such an elaborate provision as that I mentioned. This bulky Constitution of ours does not find more than a few words where this all important question of personal liberty is concerned.

Now, Sir, there are various Public Safety Acts enacted and enforced in the various provinces of the country. Here, personal liberty as it stands is almost a mockery of personal liberty. A man is being arrested at the will and pleasure of the executive. He is put in prison and he does not even know for what he has been imprisoned or for what charge he has been detained. Even where the law puts the obligation on the Government to reveal to him the reasons for which he has been detained, the executive takes its own time to do so. There are cases in which the persons concerned were not informed of the charge for weeks and months and when the charges were communicated, many of them were found to be of such a nature that they could not stand before a court of law for a minute. No right has been given to a detenu or a person arrested or detained to test the validity of the order before a court of law. This kind of administration of law was not known even under foreign rule, that is, under British rule.

Now, Sir, another contention is being indulged in, and that is that it was different when the Britisher, the foreigner was in the country and that now its is our own rule. True, but that does not mean that we can deal with liberty of the citizens as we please. Bureaucracy is bureaucracy, whether it is under foreign rule or self-rule. Power corrupts people not only under foreign rule, but also under self-government. Therefore, Sir, the citizen must be protected against the vagaries of the executive in a very careful manner as other self-governing countries have done. In almost every country in the world, they have made elaborate provision for protecting the personal liberty of the citizen. Why should India alone be an exception, I do not understand. Therefore, the framers of the Constitution, I hope, will reconsider this question and make suitable provisions for the protection of the liberty of the person.

Sir, in this amendment of mine I have not gone elaborately into the question of personal liberty. I only want the citizen concerned to be given the right of going to, and being tried by, a court of law, if his personal liberty is curtailed. That one precious right I want to be given to every citizen of India.

May I also, Sir, move the other consequential amendments included in amendment No. 502. I have moved only the one on page 53 of the List of Amendments, namely new sub-clause (7). That relates to personal law. May I move now the other portion of the amendment relating to new clauses (8) and (9) on page 54 of the List?

Mr. Vice-President : The Honourable Member may do so, but without making a speech.

Mr. Mohammed Ismail Sahib: Sir, I move that the following new clauses be added:

"(8) Nothing in clauses (2) to (6) shall affect the right guaranteed under sub-clause (i) of clause (1) of this article.

(9) No existing law shall operate after the commencement of this Constitution so far as the same affects adversely the right guaranteed under sub-clause (i) of clause (1) of this article and no law shall be passed by the Parliament or any State which may adversely affect the right guaranteed under sub-clause (i) of clause (1) of this article."

These are only consequential amendments.

Mr. Vice-President : We shall now go on to amendments Nos. 442, 499, the second part of 443, 468 and 501. These are all of similar import. I hold that the only two amendments which can be moved under the new regulations are amendments Nos. 442 and 499. The others will be voted on.

Shri M. Ananthasayanam Ayyangar (Madras: General): All these relate to free choice in the election of representatives. In a sense this is a new subject and may on that account be held over for consideration.

Mr. Vice-President : What about 499?

Pandit Thakur Dass Bhargava: That also relates to the same subject.

Mr. Vice-President : The whole group will be held over for consideration.

(Amendment No. 444 was not moved.)

Mr. Vice-President : Amendment No. 445.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That the following new clause be added after clause (1) of article 13:

'Liberty of the person is guaranteed. No person shall be deprived of his life, nor be arrested or detained in custody, or imprisoned, except according to due process of law, nor shall any person be denied equality before the law or equal protection of the laws within the territory of India'."

Sir, this again is of the same species of amendments which I am trying my best to place before the House, that is to say, the enunciation and incorporation of those elementary principles of modern liberal constitutions in which it is a pity our Constitution seems deliberately to be lacking. The liberty of the person, ever since the consciousness of civil liberties, has come upon the people, has been the main battleground of the autocrats and those fighting against them. In no single instance other than this has the power of autocracy wanted to assert itself against the just claims of the individual to be respected in regard to his personal freedom. The liberty of the person to fight against any arbitrary arrest or detention, without due process of law, has been the basis of English constitutional growth, and also of the French Constitution that was born after the Revolution. The autocrat, the despot, has always wished, whenever he was bankrupt of any other argument, just to shut up those who did not agree with him. It was, therefore, that any time the slightest difference of opinion was expressed, the slightest inconvenience or embarrassment was likely to be caused by any individual, the only course open to those who wanted to exercise autocratic power was to imprison or arrest or detain such a person without charge or trial. It has been in fact in many modern constitutions among the most cardinal articles that the liberty of the person shall be sacred, shall be guaranteed by the Constitution. We are covering new ground and should not omit to incorporate in our Constitution those items which in my opinion ought to be sacrosanct, which would never lose anything by repetition, and which would also add to our moral stature.

This Constitution, Sir, was drafted at a time when people were going through extraordinary stress and strain. The tragic happenings of some twelve or fourteen months ago were no doubt responsible for influencing those who drafted this Constitution to feel that in the then prevailing goonda raj it was necessary to restrict some how the freedom of the individual. Therefore it is that the freedom of the individual, the sacredness and sanctity of personal liberty has been soft-pedalled in this Constitution. But now after an interval of fourteen months. I would suggest to this House that these sad memories should be left to the limbo where they deserve to remain. We have had no doubt the unfortunate experiences in which individuals moved by whatever sentiments had tried to exert violence and do

injury to their fellows which no civilised State can put up with. It was therefore at the time necessary that such individuals should be apprehended immediately. In emergencies like this, in cases like this, if you wait for performing the due processes of law, if you wait for reference to a magistrate for the issue of a proper warrant, or compliance with all the other formalities of legal procedure to be fulfilled, it is possible that the ends of justice may not be served, it is possible that the maintenance of law and justice may be endangered. But, Sir, I venture to submit to this House that that was an extraordinarily abnormal situation which we hope will not recur. Constitution should be framed, not for these abnormal situations, but normal situations and for reasonable people who it must be presumed will be normally law-abiding and not throw themselves entirely to the mercy of these goondas. We are making a constitution, Sir, for such types of people and not for those exceptions, the few who might have temporarily lost the possession of their senses, and who therefore may be dealt with by extraordinary procedure.

We have in this Constitution as we have in many other Constitutions provisions relating to a state of emergency where the normal Constitution is suspended. I am not at all enamoured of these extraordinary exceptions to the working of constitutions; but even I might conceive that in moments of emergency it may be necessary, however regrettable it maybe, to suspend constitutional liberties for the time being. But we must not, when framing a constitution, always assume that this is a state of emergency, and therefore omit to mention such fundamental things as civil liberties.

I, therefore, want to mention categorically in this Constitution that the liberty of the person shall be respected, shall be guaranteed by law, and that no person shall be arrested, detained or imprisoned without due process of law. That process it is for you to provide. That process it is for laws made under this Constitution to lay down. And if and in so far as that process is fulfilled, there is no reason to fear that any abuse of such individual liberty will take place. Why then deny it, why then omit the mention of personal liberty that has all along been the mark of civilised democratic constitutions against the autocratic might of unreasoning despots? I am afraid, looking at the fate of most of my amendments, that I may perhaps be hurling myself against a blank wall. But I will not prejudice my hearers and certainly not the draftsmen by assuming that they are unreasoning until they prove that they are guilty of utterly unreasoning opposition.

Mr. Vice-President : Amendments Nos. 446, 447 and 448. These are all of similar import. Amendment No. 448 may be moved. It stands in the joint names of Shrimati Renuka Ray, Dr. Keskar, Shri Satish Chandra and Shri Mohanlal Gautam.

(Amendments Nos. 448 and 446 were not moved.)

Mahboob Ali Baig Sahib Bahadur : (Madras : Muslim): Sir, there is another amendment in my name, amendment No. 451: that is for the deletion of clauses (2), (3), (4), (5) and (6).

Mr. Vice-President : That comes under another group which will be dealt with hereafter.

Mahboob Ali Baig Sahib Bahadur: Then, alternatively, I shall move amendment No. 447. Sir, I move:

"That clauses (2) to (6) of article 13 be deleted and the following proviso be added to clause (1):

'Provided, however that no citizen in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquillity in the country'."

[Mahboob Ali Baig Sahib Bahadur]

Mr. Vice-President, Sir, to me it looks as if the fundamental rights are listed in clause (1) only to be deprived of under clauses (2) to (6), for in the first place, these fundamental rights are subject to the existing laws. If in the past the laws in force, the law-less laws as I would call them, the repressive laws, laws which were enacted for depriving the citizens of their human rights, if they have deprived the citizens of these rights under the provisions under clauses (2) to (6), they will continue to do so. The laws that I might refer to as such are the Criminal Law Amendment Acts, the Press Acts and the several Security Acts that have been enacted in the Provinces. And these clauses (2) to (6) further say that if the existing laws are not rigorous, repressive and wide enough to annihilate these rights, the States as defined in article 7 which covers not only legislatures, executive Governments and also the local bodies, nay, even the local authorities can complete the havoc. I am not indulging in hyperbole or exaggeration. I shall presently show that there is not aniota of sentiment or exaggeration in making this criticism. Fundamental rights are fundamental, permanent, sacred and ought to be guaranteed against coercive powers of a State by excluding the jurisdiction of the executive and the legislature. If the jurisdiction of the executive and the legislature is not excluded, these fundamental rights will be reduced to ordinary rights and cease to be fundamental. That is the import, the significance of fundamental rights.

Then, Sir, it is said by Dr. Ambedkar in his introductory speech that fundamental rights are not absolute. Of course, they are not; they are always subject to the interests of the general public and the safety of the State, but the question is when a certain citizen oversteps the limits so as to endanger the safety of the State, who is to judge? According to me, Sir, and according to well recognised canons, it is not the executive or the legislature, but it is the independent judiciary of the State that has to judge whether a certain citizen has overstepped the limits so as to endanger the safety of the State. This distinction was recognised by the framers of the American Constitution in that famous Fourteenth Amendment which clearly laid down that no Congress can make any law to prejudice the freedom of speech, the freedom of association and the freedom of the press. This was in 1791, and if the American citizen transgressed the limits and endangered the State, the judiciary would judge him and not the legislature or the executive.

Even in the case of Britain where there is no written constitution two prominent and effective safeguards were there. They were governed by the law of the land. The law of the land is the law which gave them freedom of thought, freedom of expression and they cannot be proceeded against without due process of law. These were the two safeguards. It is only in the German Constitution that we find restrictions such as those in clauses (2) to (6). It is only in the German Constitution that the fundamental rights were subject to the provisions of the law that may be made by the legislature. That means that the citizens could enjoy only those rights which the legislature would give them, would permit them to enjoy from time to time. That cuts at the very root of fundamental rights and the fundamental rights cease to be fundamental. I dare say, Sir, you know what was the result. Hitler could make his legislature pass any law, put Germans in concentration camps without trial under the provisions of law made by the legislature of Germany. We know what the result was. It was regimentation, that every German should think a like and anybody who differed was sent to concentration camps. Totalitarianism, fascism was the result.

(Mr. Vice-President rang the time bell.)

I would request you to give me some time more. I am just developing the point.

Mr. Vice-President : Sorry, you cannot have time without my permission. At the proper time, I would request you to finish and take your seat. I hope you will respect my wishes.

Mahboob Ali Baig Sahib Bahadur : Sir, it is these wide considerations that were responsible for the deletion of such clauses by this august Assembly on the 30th April, 1947, when Sardar Patel who was the Chairman of the Committee to report on Fundamental Rights, presented these Fundamental Rights. He moved for the deletion of all these provisos and in the discussion on the 30th of April 1947, many prominent men including Pandit Jawaharlal Nehru took part, and all these provisos were deleted. The proceedings can be found on pages 445 to 447. Here, the Prime Minister of India says:

"A fundamental 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."

Therefore, Sir, in this august Assembly on the 30th of April 1947, after discussion in which prominent men including Mr. Munshi took part, these provisos were deleted. This departure now to re-introduce these provisions, I submit, with great respect, is a departure which is retrograde and I submit, Sir, that we ought not to allow it. My submission is that the existence of these three provisos is the very negation of the Fundamental Rights. I would request you to consider this question from three or four points of view.

(Mr. Vice-President again rang the time bell.)

With your permission, Sir.....

Mr. Vice-President : No; there are many more speakers. I must now insist upon your obeying my orders.

Mahboob Ali Baig Sahib Bahadur : A few more minutes, Sir.

Mr. Vice-President : I have given you enough time. There are other speakers. I have an obligation towards them also.

Now, we shall go to the next two amendments. One is amendment No. 449 and the other is amendment No. 453. Of these two, I think amendment No. 453 is more comprehensive and may be moved. It stands in the joint names of Dr. Pattabhi Sitaramayya and others. There is also an amendment to that amendment.

Shri M. Ananthasayanam Ayyangar : Sir, I submit that this amendment No. 453* which stands in our joint names may be taken as formally moved. I find in the order sheet, in list No. IV a further amendment to this amendment. I accept that amendment, Sir. If you kindly give permission to move that amendment, I shall accept it and it is not necessary to move this amendment.

Mr. Vice-President : Mr. Munshi.

Shri H. V. Kamath : On a point of order, Sir, unless this amendment is moved, no amendment can be moved to this. This cannot be taken as moved.

Mr. Vice-President : Do you want that he should read over the amendment? I over looked it. Mr. Munshi.

* That for clause (2) of article 13, the following be substituted:—

"Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, offences against decency or morality or sedition or other matters which undermine the security of the State."

Shri K. M. Munshi : (Bombay : General): Mr. Vice-President, Sir, I beg to move amendment No. 86 in the additional list which runs as follows: That for amendment No. 453 of the list of Amendments, the following be substituted:

"That for clause (2) of article 13, the following be substituted:—

'(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation, or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State'."

Sir, before I go to the merits of the amendment, I should like to point out a verbal error which I am sure my honourable Friend Dr. Ambedkar will permit me to correct. After the words, "shall affect the operation of any existing law", I propose that the words "in so far as it relates to" should be added; because, that connects this clause with "to libel, etc.". This would make the meaning clear and I am sure my honourable Friend will accept it.

As regards the merits, the changes sought to be made are two. In the original clause, the word 'sedition' occurs. The original clause reads as follows: "relating to libel, slander, defamation, sedition or any other matter....." The amendment seeks to omit the word 'sedition'. Further, the amendment seeks to substitute the words "undermines the authority or foundation of the State" by the words.....

Mr. Naziruddin Ahmad : On a point of order, Sir, we have not got this amendment at all. In list IV the number does not tally at all. I believe, Sir, it was circulated today and it cannot be taken up. We should be given some breathing time in order to understand what is going on.

Mr. Vice-President : I think amendments to amendments can be permitted up to the time when the amendment is moved. I understand that this was placed on the table before each member.

Shri K. M. Munshi: Really speaking, the original amendments numbers 458 and 461 have been brought under a single amendment. There is nothing new in this amendment, Sir.

Mr. Vice-President : Go on, Mr. Munshi.

Pandit Hirday Nath Kunzru: (United Provinces : General): Sir, may I request Mr. Munshi to read out his amendment, once again? What is it an amendment to?

Shri K. M. Munshi: This is an amendment to amendment No. 453, on page 29. In effect, it combines two amendments which are already on the list. This is how it reads:

"That for clause (2) of article 13, the following be substituted:—

'(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law, or prevent the State from making any law relating to libel, slander, defamation'."

Then, comes another change.

"or any matter which offends against decency or morality."

Then comes another change.

"of which undermines the security of, or tends to overthrow the State."

That is exactly the wording of amendment No. 461.

The object of.....

Shri Mahavir Tyagi (United Provinces : General): May I take it that the word 'morality' has been taken out?

Shri K. M. Munshi: I read the word 'morality'.

Mr. Vice-President : You need be under no sort of apprehension so far as that is concerned.

Shri K. M. Munshi : The House will not permit me to do anything of the sort. Sir, the importance of this amendment is that it seeks to delete the word 'sedition' and uses a much better pharseology, *viz*., "which undermines the security of, or tends to overthrow, the State." The object is to remove the word 'sedition' which is of doubtful and varying import and to introduce words which are now considered to be the gist of an offence against the State.

Shri Amiyo Kumar Ghosh : (Bihar: General): On a point of information. I want to know whether without moving the original amendment, an amendment, to it can be moved?

Mr. Vice-President : The amendment was moved formally.

Shri K. M. Munshi : I was pointing out that the word 'sedition' has been a word of varying import and has created considerable doubt in the minds of not only the members of this House but of Courts of law all over the world. Its definition has been very simple and given so far back as 1868. It says "Sedition embraces all those practices whether by word or deed or writing which are calculated to disturb the tranquility of the State and lead ignorant persons to subvert the Government". But in practice it has had a curious fortune. A hundred and fifty years ago in England, holding a meeting or conducting a procession was considered sedition. Even holding an opinion against, which will bring ill-will towards Government, was considered sedition once. Our notorious Section 124-A of Penal Code was sometimes construed so widely that I remember in a case a criticism of a District Magistrate was urged to be covered by Section 124-A. But the public opinion has changed considerably since and now that we have a democratic Government a line must be drawn between criticism of Government which should be welcome and incitement which would undermine the security or order on which civilized life is based, or which is calculated to overthrow the State. Therefore the word 'sedition' has been omitted. As a matter of fact the essence of democracy is Criticism of Government. The party system which necessarily involves an advocacy of the replacement of one Government by another is its only bulwark; the advocacy of a different system of Government should be welcome because that gives vitality to a democracy. The object therefore of this amendment is to make a distinction between the two positions. Our Federal Court also in the case of Niharendu Dutt Majumdar *Vs* King, in III and IV Federal Court Reports, has made a distinction between what 'Sedition' meant when the Indian Penal Code was enacted and 'Sedition' as understood in 1942. A passage from the judgment of the Chief Justice of India would make the position, as to what is an offence against the State at present, clear. It says at page 50:

> "This (sedition) is not made an offence in order to minister to the wounded vanity of Governments but because where Government and the law ceases to be obeyed because no respect is felt any longer for them, only anarchy can follow. Public disorder, or the reasonable anticipation or likelihood of public disorder is thus the gist of the offence. The acts or words complained of must either incite to disorder or must be such as to satisfy reasonable men that that is their intention or tendency."

This amendment therefore seeks to use words which properly answer to the implication of the word 'Sedition' as understood by the present generation in a democracy and therefore there is no substantial change; the equivocal word 'sedition' only is sought to be deleted from the article. Otherwise

[Shri K. M. Munshi]

an erroneous impression would be created that we want to perpetuate 124-A of the I.P.C. or its meaning which was considered good law in earlier days. Sir, with these words, I move this amendment.

Shri H. V. Kamath : On a point of clarification, may I ask my learned friend Mr. Munshi to examine whether the deletion of the word 'other' from the phrase 'any other matter' will not create some doubt or difficulty about the meaning of this amendment? Because if he will look up article 13 in the Draft Constitution, he will find that the phrase used is "any other matter". Here the word 'other' is deleted which will mean that so far as slander, defamation and libel are concerned, they cannot offend against decency or morality, but only some other matter can. Is it the contention of Mr. Munshi that neither defamation, slander nor libel offends against decency and morality?

Shri K. M. Munshi : In the original clause of this article as drafted the words were—"libel, slander, defamation, sedition or any other matter which offends against decency or morality or undermines the authority or foundation of the State." Here we have omitted the word 'sedition'. Slander and defamation need not be necessarily connected with a violation of decency or morality nor do they undermine the authority of the State: the words "any matter" indicate an independent category. One category is libel, slander and defamation. The other category is any matter which offends against the State. The word 'other' therefore would be in appropriate.

Shri H. V. Kamath : In the draft article the antecedents of the words 'other' matter were libel, slander, defamation and sedition, all of them.

Shri K. M. Munshi : I cannot agree with my honourable friend.

Mr. Vice-President : Do you press amendment 449?

Mr. Naziruddin Ahmad : Yes.

Mr. Vice-President : It will be put to vote. We next come to 450, 451, 452, 453, 465 and 478—all are of similar import and should be considered together. Amendment 450 is allowed.

Sardar Hukum Singh (East Punjab : Sikh): Mr. Vice-President, Sir, I beg to move:

"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."

Sir, in article 13(1), sub-clauses (a), (b) and (c), they give constitutional protection to the individual against the coercive power of the State, if they stood by themselves. But sub-clauses (2) to (6) of article 13 would appear to take away the very soul out of these protective clauses. These lay down that nothing in sub-clauses (a), (b), (c) of article 13 shall effect the operation of any of the existing laws, that is, the various laws that abrogate the rights envisaged in sub-clause (1) which were enacted for the suppression of human liberties, for instance, the Criminal Law Amendment Act, the Press Act, and other various security Acts. If they are to continue in the same way as before, then where is the change ushered in and so loudly talked of? The main purpose of declaring the rights as fundamental is to safeguard the freedom of the citizen against any interference by the ordinary legislature and the executive of the day. The rights detailed in article 13(1) are such that they cannot be alienated by any individual, even voluntarily. The Government of the day is particularly precluded from infringing them, except under very special circumstances. But here the freedom of assembling, freedom of the press and other freedoms have been made so precarious and entirely left at the mercy of the legislature that the whole beauty and the charm has been taken away. It is

not only the existing laws that have been subjected to this clause, but the State has been further armed with extraordinary powers to make any law relating to libel, slander etc. It may be said that every State should have the power and jurisdiction to make laws with regard to such matters as sedition, slander and libel. But in other countries like America it is for the Supreme Court to judge the matter, keeping in view all the circumstances and the environments, and to say whether individual liberty has been sufficiently safeguarded or whether the legislature has transgressed into the freedom of the citizen. The balance is kept in the hands of the judiciary which in the case of all civilized countries has always weighed honestly and consequently protected the citizen from unfair encroachment by legislatures. But a curious method is being adopted under our Constitution by adding these sub-clauses (2) to (6). The Honourable Mover defended these sub-clauses by remarking that he could quote at least one precedent for each of these restrictions. But it is here that the difference lies, that whereas in those countries it is the judiciary which regulates the spheres of these freedoms and the extent of the restrictions to be imposed, under article 13, it is the legislature that is being empowered with these powers by sub-clauses (2) to (6). The right to freedom of speech is given in article 13 (1) (a), but it has been restricted by allowing the legislature to enact any measure under 13(2), relating to matters which undermine the authority or foundation of the State; the right to assembly seems guaranteed under 13 (1) (b), but it has been made subject to the qualification that legislation may be adopted in the interest of public order—13(3). Further under 13(4) to 13 (6), any legislation restricting these liberties can be enacted "in the interest of the general public". Now who is to judge whether any measure adopted or legislation enacted is "in the interest of the general public" or "in the interest of public order", or whether it relates to "any matter which undermines the authority or foundation of the State"? The sphere of the Supreme Court will be very limited. The only question before it would be whether the legislation concerned is "in the interest of the public order". Only the *bona-fides* of the legislature will be the main point for decision by the Court and when once it is found by the court that the Government honestly believed that the legislation was needed "in the interest of the public order", there would be nothing left for its interference. The proviso in article 13(3) has been so worded as to remove from the Supreme Court its competence to consider and determine whether in fact there were circumstances justifying such legislation. The actual provisions and the extent of the restrictions imposed would be out of the scope of judicial determination.

For further illustration we may take the law of sedition enacted under 13(2). All that the Supreme Court shall have to adjudicate upon would be whether the law enacted relates to "sedition" and if it does, the judiciary would be bound to come to a finding that it is valid. It would not be for the Judge to probe into the matter whether the actual provisions are oppressive and unjust. If the restriction is allowed to remain as it is contemplated in 13(2), then the citizens will have no chance of getting any law relating to sedition declared invalid, howsoever oppressive it might be in restricting and negativing the freedom promised in 13 (1) (a). The "court" would be bound to limit its enquiry within this field that the Parliament is permitted under the Constitution to make any laws pertaining to sedition and so it has done that. The constitution is not infringed anywhere, and rather, the draft is declaring valid in advance any law that might be enacted by the Parliament—only if it related to sedition. Similar is the case of other freedom posed in article 13(1) but eclipsed and negatived in clauses (2) to (6).

It may be argued that under a national government, the legislature, representative of the people and elected on adult franchise, can and should be trusted for the safe custody of citizens' rights. But as has been aptly remarked, "If the danger of executive aggression has disappeared, that from legislative interference has greatly increased, and it is largely against this danger that the

[Sardar Hukum Singh]

modern declarations of fundamental rights are directed, as formerly they were directed against the tyranny of autocratic kings."

The very object of a Bill of Rights is to place these rights out of the influence of the ordinary legislature, and if, as under clauses (2) to (6) of article 13, we leave it to this very body, which in a democracy, is nothing beyond one political party, to finally judge when these rights, so sacred on paper and glorified as Fundamentals, are to be extinguished, we are certainly making these freedoms illusory.

If the other countries like the U.S.A. have placed full confidence in their Judiciary and by their long experience it has been found that the confidence was not misplaced, why should we not depend upon similar guardians to protect the individual liberties and the State interests, instead of hedging round freedom by so many exceptions under these sub-clauses?

Sir, I commend this amendment to the House.

Mr. Vice-President : The next amendment on the list is the alternative amendment No. 451, in the name of Mr. Mahboob Ali Baig.

Mahboob Ali Baig Sahib Bahadur : Sir, I move:

"That the following words be inserted at the beginning of clauses (2), (3), (4), (5) and (6) of article 13:—

'Without prejudice and subject to the provisions of article 8."

My purpose in moving this amendment is two fold. Firstly, I want to know the mind of Dr. Ambedkar and the Drafting Committee how article 8 stands in relation to these provisos. It may be asked whether these clauses (2) to (6) are governed by article 8 or not. If these clauses are governed by article 8, may I refer to article 8 itself. It says:

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part.' "

The words "inconsistent with the provisions of this part" do not affect the existing laws relating to libel, the existing laws relating to restrictions on the exercise of the rights with regard to association or assembly. That means that the existing laws mentioned in clauses (2) to (6) are not all rendered void under Article 8. The intention is clear from the footnote that is appended to article 15, where the reason for the inclusion of the word "personal" is given. There it is said:

"The Committee is of opinion that the word 'liberty' should be qualified by the insertion of the word 'personal' before it, for otherwise it might be construed very widely so as to include even the freedom already dealt with in article 13."

Thus it is very clear that if the existing law relates to libel, if it relates to meetings or associations, or freedom of speech or expression, then that existing law stands in spite of the fact that article 8 says that any law in force which is inconsistent with the fundamental rights is void. So we come to this position. In the past the existing laws, for instance, the Criminal Law Amendment Acts, the Press Acts or the Security Acts laid down restrictions which are inconsistent with the liberties mentioned in clause (1). They shall be in operation and they are not rendered void. That seems to be the meaning that can naturally be attached to this.

The second point which I wish to submit is this. By the constitution certain powers are given to the legislature or the executive. Whether a court can question the validity or otherwise of such action, order or law is another question. My opinion is that where there is a provision in the constitution itself giving power to the legislature or in this case the State covering the legislature,

executive, local bodies and such other institutions, the jurisdiction of the court is ousted, for the court would say that in the constitution itself power is granted to the legislature to deprive, restrict or limit the rights of the citizen and so they cannot go into the validity or otherwise of the law or order, unless as it is said there is *mala fides*. It is for the authorities to judge whether certain circumstances have arisen for which an order or law can be passed. Anyhow I pose this question to the Chairman of the Drafting Committee whether in these circumstances, *viz*., where there is in existence a provision in the constitution itself empowering the legislature or the executive to pass an order or law abridging the rights mentioned in clause (1), the court can go into the merits or demerits of the order or law and declare a certain law invalid or a certain Act as not justified. In my view the court's jurisdiction is ousted by clearly mentioning in the constitution itself that the State shall have the power to make laws relating to libel, association or assembly in the interest of public order, restrictions on the exercise of....

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, if I might interrupt my honourable friend, I have understood his point and I appreciate it and I undertake to reply and satisfy him as to what it means. It is therefore unnecessary for him to dilate further on the point.

Mahboob Ali Baig Sahib Bahadur : The third point which I would submit is this. The new set up would be what is called parliamentary democracy or rule by a certain political party, by the party executive or party government and we can well imagine what would be the measure of fundamental rights that the people would enjoy under parliamentary democracy or rule by a party. In these circumstances is it not wise or necessary in the interest of the general public that the future legislatures ruled by a party or the executive ruled by a party are not given powers by this very constitution itself? For as has been said 'power corrupteth' and if absolute power is placed in the hands of party government by virtue of the terms of this constitution itself, such legislature or executive will become absolutely corrupt. Therefore, I move that if at all these provisos are necessary, they must be subject to the provision that no law can be passed, no law would be applicable which is inconsistent with the freedoms mentioned in sub-clause (1). Sir, I move.

Mr. Vice-President : The next group consists of amendment Nos. 454, 455, 469, 475, 481, and the first part of 485. They are of similar import and I allow amendment No. 454 to be moved. There are certain amendments to the amendment also.

Pandit Thakur Dass Bhargava : Sir, I move:

"That in clauses (2), (3), (4), (5) and (6) of article 13 the words "affect the operation of any existing law, or" be added."

To this clause an amendment has been given by the Honourable Dr. Ambedkar.

Mr. Vice-President : May I suggest that when you move amendment No. 454 you move it along with your new amendment?

Pandit Thakur Dass Bhargava : I have moved No. 454, to which an amendment, stands in the name of the Honourable Dr. Ambedkar. To this latter I have given an amendment which is No. 3 in today's list. I have also given two other amendments to amendment No. 454. So I shall, with your permission, move them in one bloc.

Sir, I move:

"That with reference to amendment No. 49 of list 1 of the Amendment to Amendments—

(i) in clause (2) of article 13 for the word 'any' where it occurs for the second time the word 'reasonable' be substituted and the word 'sedition' in the said clause be omitted.

[Pandit Thakur Dass Bhargava]

(ii) that in clauses (3), (4), (5) and (6) of article 13 before the word 'restrictions' the word 'reasonable' be inserted."

The net result of these amendments is the following: I want that the words "affect the operation of any existing law or" be deleted and also that before the word "restrictions" in clauses (3), (4), (5) and (6) the word "reasonable" be placed. I also want that in clause (2) for the word 'any' where it occurs for the second time, the word 'reasonable' be substituted.

If my suggestion is accepted by the House then clause (3) would read:

"Nothing in sub-clause (b) of the said clause shall prevent the State from making any law, imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

As regards the effect of amendment No. 454, if the following words are taken away—

"Affect the operation of any existing law, or"

the result will be that, not that all the present laws which are in force today will be taken away, but only such laws or portions of such laws as are inconsistent with the fundamental rights according to article 13, will be taken away, and article 8 will be in force.

Now I will deal with these amendments separately. I want to deal with 454 first.

You will be pleased to observe that so far as article 8 is concerned, it really keeps alive all the laws which are in force today, except such portions of them as are inconsistent with the fundamental rights conferred by Part III. These words—"affect the operation of any existing law, or".....

Mr. Vice-President : How can you deal with a thing unless it is moved by Dr. Ambedkar?

Pandit Thakur Dass Bhargava : In the first instance, a resolution has been passed by this House that all amendments shall be taken as moved without being formally moved. Secondly, if you allow me another chance to speak on the amendment when moved by Dr. Ambedkar, I will be content to move my amendment then. Only with a view to save time, I have taken this course and, I had asked for your permission, though it was unnecessary to do so.

Mr. Vice-President : All right.

Pandit Thakur Dass Bhargava : Thank you. I was speaking of the effect of the words—"affect the operation of any existing law, or" and I submitted to the House that so far as the words of article 8 go, even if these words are not there, all the present laws shall be alive. They shall not be dead by the fact that article 8 exists in Part III. The article reads thus:

"All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall, to the extent of such inconsistency, be void."

So that the real effect which this Constitution wants to give is that so far as those laws are inconsistent, they should be made inoperative, The rest will continue. So if these words are not there—"affect the operation of any existing law, or"—that would make no difference. If you examine the amendment to be moved by Dr. Ambedkar, the result is the same because in his amendment the words "in so far as it imposes" appear. Thus article 8 governs article 13 according to my amendment as well as his. The amendment of Dr. Ambedkar is unnecessary if the House accepts my amendment No. 454.

Mr. Vice-President : It seems to me that if Dr. Ambedkar moves his amendment, then your amendment will not be necessary at all.

Pandit Thakur Dass Bhargava : My amendment will still be necessary as it deals with other matters also.

Mr. Vice-President : I do not wish to discuss the matter with you.

Pandit Thakur Dass Bhargava : There are several clauses in this Constitution in which an attempt has been made to keep the present laws alive as much as possible. Article 8 is the first attempt. According to article 8 only to the extent of inconsistency such laws will become inoperative. Therefore, any further attempt was unnecessary.

In article 27 an attempt has again been made to keep alive certain of the laws that come within the purview of article 27 in the proviso. Then again not being content with this, another section is there in the Constitution, namely, article 307, which reads:

> "Subject to the other provisions of this Constitution, all the laws in force in the territory of India immediately before the commencement of this Constitution shall continuance in force therein until altered or repealed or amended by a competent Legislature or other competent authority."

The laws in force are defined in Explanation No. 1 and there is clause (2) which deals with certain aspects of the question. Even if these sections were not there, even then the general principle is that the law would continue in force unless repealed by any enactment or declared illegal by any Court. Therefore, so far as the continuance of the present law is concerned, the words "affect the operation of any existing law, or" are surplus, unnecessary and futile. But I would not have submitted this amendment before the House if these words were only surplus. They have another tendency and that has been emphasized by the previous speaker. There are good many amendments in the list of amendments to the same effect. I have received representations from various bodies and persons who have said in their telegrams and letters that these words should be removed, because the apprehension is that as article 8 is part of the Constitution, so is article 13 part of the Constitution. In sequence article 13 comes later and numerically it is of greater import. If article 8 is good law, so is article 13. As a matter of fact article 13 is sufficient by itself, and all the present laws, it may and can be argued, must be continued in spite of article 8. This is the general apprehension in the public mind and it is therefore that Dr. Ambedkar has also been forced to table an amendment No. 49 to my amendment No. 454.

This interpretation and argument may be wrong; this may be unjustifiable; but such an argument is possible. In my opinion the law must be simple and not vague and ununderstandable. Therefore these mischievous and misleading words should be taken away. As they have further the effect of misleading the public I hold that these words, unless taken away, shall not allay public fear.

When I read these different sections from 9 to 13 and up to 26, and when I read of these Fundamental Rights, to be frank I missed the most fundamental right which any national in any country must have *viz.*, the right to vote.

Mr. Vice-President : That is not the subject matter of the present discussion. The honourable Member should confine his remarks to his amendment.

Pandit Thakur Dass Bhargava : In considering article 15 also the House will come to the conclusion that the most important of the Fundamental Right of personal liberty and life has not been made justiciable nor mentioned in article 13. If the House has in its mind the present position in the country, it will come to the conclusion that the present state of things is anything but satisfactory. Freedom of speech and expression have been restricted by sub-clause (2). Fortunately the honourable Member Mr. Munshi has spoken

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before you about deletion of the word "sedition". If these words 'affect the operation of existing laws' are not removed the effect would be that sedition would continue to mean what it has been meaning in spite of the contrary ruling of the Privy Council given in 1945. If the present laws are allowed to operate without being controlled or governed by article 8 the position will be irretrievably intolerable. Thus my submission is that in regard to freedom of speech and expression if you allow the present law to be continued without testing it in a court of law, a situation would arise which would not be regarded as satisfactory by the citizens of India.

Similarly, at present you have the right to assemble peaceably and without arms and you have in 1947 passed a law under which even peaceable assemblage could be bombed without warning from the sky. We have today many provisions which are against this peaceable assembling. Similarly in regard to ban on association or unions.

The Honourable Dr. B. R. Ambedkar : Is it open to my honourable Friend to speak generally on the clauses?

Mr. Vice-President : That is what I am trying to draw his attention to.

The Honourable Dr. B. R. Ambedkar : This is an abuse of the procedure of the House. I cannot help saying that. When a Member speaks on an amendment, he must confine himself to that amendment. He cannot avail himself of this opportunity of rambling over the entire field.

Pandit Thakur Dass Bhargava : I am speaking on the amendment; but the manner in which Dr. Ambedkar speaks and expresses himself is extremely objectionable. Why should he get up and speak in a threatening mood or a domineering tone?

Mr. Vice-President : Everybody seems to have lost his temper except the Chair. *(Laughter)*. I had given a warning to Mr. Bhargava and, just now, was about to repeat it when Dr. Ambedkar stood up. I am perfectly certain that he was carried away by his feeling. I do not see any reason why there should be so much feeling aroused. He has been under a strain for days together. I can well understand his position and I hope that the House will allow the matter to rest there.

Now, I hope Mr. Bhargava realises the position.

Pandit Thakur Dass Bhargava : I will speak only on the amendment. But when a Member speaks on an amendment, it is not for other Members to decide what is relevant and what is not.

Mr. Vice-President : I was about to say so, but I was interrupted.

Pandit Thakur Dass Bhargava : Sir, I repeat that unless and until these offending words are removed and if the present law is allowed to continue without the validity of the present laws being tested in any court, the situation in the country will be most unsatisfactory. I am adverting to the present law in order to point out that it is objectionable and if it continues to have the force of law, there will be no use in granting Fundamental Rights. Therefore I am entitled to speak of the Fundamental Rights. I will certainly not speak if you do not allow me, but I maintain that whatever I was and am saying is perfectly relevant. (Hon. Members: 'Go on'). Sir, if I do not refer to the situation in the country and to the fact that this law does not allow the present state of tension in the country to be moved, what is the use of the Fundamental Rights. I ask.

Mr. Vice-President : Kindly remember one thing which is that you may refer to it in a general manner and not make that the principal point of your speech on this occasion. You may refer to all that in such a way as to adopt a *via media* where your purpose will be served without taking up more time than is actually necessary.

Pandit Thakur Dass Bhargava : I am alive to the fact that it is a sin to take up the time of the House unnecessarily. I have been exercising as much restraint as possible. I thank you for the advice given by you. I will not refer to the present situation also if you do not like it.

But a few days ago the Honourable Sardar Patel, in a Convocation Address delivered by him, told the whole country that the labourer in the field and the ordinary man in the street has not felt the glow of India's freedom. Nobody feels that glow today, though India is free. Why? If the Fundamental Rights are there and if they are enjoyed by the people, why is there not this glow of freedom? The reason is that these offending words seem to nullify what article 8 seems to grant in respect of the present laws and people do not take us seriously. That is the cause of the general apathy of the people. If I referred in connection with this matter to the present situation , my object was only to emphasise that the present situation is very unsatisfactory. I will leave the matter at that.

As regards the amendment for the addition of the word 'reasonable' I will beg the House kindly to consider it calmly and dispassionately. We have heard the speeches of Sardar Hukam Singh and Mr. Mahboob Ali Baig. Both of them asked what would happen to the Fundamental Rights if the legislature has the right to substantially restrict the Fundamental Rights? That is quite true. Are the destinies of the people of this country and the nationals of this country and their rights to be regulated by the executive and by the legislature or by the courts? This is the question of questions. The question has been asked, if the Legislature enacts a particular Act, is that the final word? If you consider clauses (3) to (6) you will come to the conclusion that, as soon as you find that in the Statement of Objects and Reasons an enactment says that its object is to serve the interests of the public or to protect public order, then the courts would be helpless to come to the rescue of the nationals of this country in respect of the restrictions. Similarly, if in the operative part of any of the sections of any law it is so stated in the Act, I beg to ask what court will be able to say that, as a matter of fact the legislature was not authorised to enact a particular law. My submission is that the Supreme Court should ultimately be the arbiter and should have the final say in regard to the destinies of our nationals. Therefore, if you put the word 'reasonable' here, the question will be solved and all the doubts will be resolved.

Sir, one speaker was asking where the soul in the lifeless article 13 was? I am putting the soul there. If you put the word 'reasonable' there, the court will have to see whether a particular Act is in the interests of the public and secondly whether the restrictions imposed by the legislatures are reasonable, proper and necessary in the circumstances of the case. The courts shall have to go into the question and it will not be the legislature and the executive who could play with the fundamental rights of the people. It is the courts which will have the final say. Therefore my submission is that we must put in these words "reasonable" or "proper" or "necessary" or whatever good word the House likes. I understand that Dr. Ambedkar is agreeable to the word "reasonable". I have therefore put in the word "reasonable" to become reasonable. Otherwise if words like "necessary" or "proper" had been accepted, I do not think they would have taken away from but would have materially added to the liberties of the country. Therefore I respectfully request that the amendment I have tabled may be accepted so that article 13 may be made justiciable. Otherwise article 13 is a nullity. It is not fully justiciable

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now and the courts will not be able to say whether the restrictions are necessary or reasonable. If any cases are referred to the courts, they will have to decide whether restriction is in the interests of the public or not but that must already have been decided by the words of the enactment. Therefore the courts will not be able to say whether a fundamental right has been infringed or not. Therefore my submission is that, if you put in the word "reasonable", you will be giving the courts the final authority to say whether the restrictions put are reasonable or reasonably necessary or not. With the words, I commend this amendment to the House.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"that with reference to amendment No. 454....."

Shri H. V. Kamath : On a point of order, Sir, has amendment No. 454 been moved?

Mr. Vice-President : Please continue.

The Honourable Dr. B. R. Ambedkar :

"with reference to amendment No. 454 of the List of Amendments—

(i) in clauses (3), (4), (5) and (6) of article 13, after the words 'any existing law' the words 'in so far as it imposes' be inserted, and

(ii) in clause (6) of article 13, after the words 'in particular' the words 'nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law' be inserted."

Syed Abdur Rouf (Assam : Muslim): On a point of order, Sir, I think that Dr. Ambedkar's amendment cannot be an amendment to amendment No. 454. Amendment No. 454 seeks to delete clauses (2), (3), (4), (5) and (6), whereas Dr. Ambedkar's amendment seeks to insert some words in those clauses and cannot therefore be moved as an amendment to an amendment.

Mr. Vice-President : It seems to me that what Dr. Ambedkar really seeks to do is to retain the original clauses with certain qualifications. Therefore I rule that he is in order.

Shri H. V. Kamath : This will have the effect of negativing the original amendment.

Mr. Vice-President : Kindly take your seat.

The Honourable Dr. B. R. Ambedkar : From the speeches which have been made on article 13 and article 8 and the words "existing law" which occur in some of the provisos to article 13, it seems to me that there is a good deal of misunderstanding about what is exactly intended to be done with regard to existing law. Now the fundamental article is article 8 which specifically, without any kind of reservation, says that any existing law which is inconsistent with the Fundamental Rights as enacted in this part of the Constitution is void. That is a fundamental proposition and I have no doubt about it that any trained lawyer, if he was asked to interpret the words "existing law" occurring in the sub-clauses to article 13, would read "existing law" in so far as it is not inconsistent with the fundamental rights. There is no doubt that that is the way in which the phrase "existing law" in the sub-clauses would be interpreted. It is unnecessary to repeat the proposition stated in article 8 every time the phrase "existing law" occurs, because it is a rule of interpretation that for interpreting any law, all relevant sections shall be taken into account and read in such a way that one section is reconciled with another. Therefore the Drafting Committee felt that they have laid down in article 8 the full and complete proposition that any existing law, in

so far as it is inconsistent with the Fundamental Rights, will stand abrogated. The Drafting Committee did not feel it necessary to incorporate some such qualification in using the phrase "existing law" in the various clauses where these words occur. As I see, many people have not been able to read the clause in that way. In reading "existing law", they seem to forget what has already been stated in article 8. In order to remove the misunderstanding that is likely to becaused in a layman's mind, I have brought forward this amendment to sub-clauses (3), (4), (5) and (6). I will read for illustration sub-clause (3) with my amendment.

"Nothing in sub-clause (b) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law, imposing in the interests of public order."

I am accepting Mr. Bhargava's amendment and so I will add the word "reasonable" also.

"imposing in the interests of public order reasonable restrictions on the exercise of the right conferred by the said sub-clause."

Now, the words "in so far as it imposes" to my mind make the idea complete and free from any doubt that the existing law is saved only in so far as it imposes reasonable restrictions. I think with that amendment there ought to be no difficulty in understanding that the existing law is saved only to a limited extent, it is saved only if it is not in conflict with the Fundamental Rights.

Sub-clause (6) has been differently worded, because the word there is different from what occurs in sub-clauses (3), (4) and (5). Honourable Members will be able to read for themselves in order to make out what it exactly means.

Now, my friend, Pandit Thakur Dass Bhargava entered into a great tirade against the Drafting Committee, accusing them of having gone out of their way to preserve existing laws. I do not know what he wants the Drafting Committee to do. Does he want us to say straightaway that all existing laws shall stand abrogated on the day on which the Constitution comes into existence?

Pandit Thakur Dass Bhargava : Not exactly.

The Honourable Dr. B. R. Ambedkar : What we have said is that the existing law shall stand abrogated in so far as they are inconsistent with the provisions of this Constitution. Surely the administration of this country is dependent upon the continued existence of the laws which are in force today. It would bring down the whole administration to pieces if the existing laws were completely and wholly abrogated.

Now I take article 307. He said that we have made provisions that the existing laws should be continued unless amended. Now, I should have thought that a man who understands law ought to be able to realize this fact that after the Constitution comes into existence, the exclusive power of making law in this country belongs to Parliament or to the several local legislatures in their respective spheres. Obviously, if you enunciate the proposition that hereafter no law shall be in operation or shall have any force or sanction, unless it has been enacted by Parliament, what would be the position? The position would be that all the laws which have been made by the earlier legislature, by the Central Legislative Assembly or the Provincial Legislative Assembly would absolutely fall to pieces, because they would cease to have any sanction, not having been made by the Parliament or by the local legislatures, which under this Constitution are the only body which are entitled to make law. It is, therefore, necessary that a provision should exist in the Constitution that any laws which have been already made shall not stand

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abrogated for the mere reason that they have not been made by Parliament. That is the reason why article 307 has been introduced into this Constitution. I, therefore, submit, Sir, that my amendment which particularises the portion of the existing law which shall continue in operation so far as the Fundamental Rights are concerned, meets the difficulty, which several honourable Members have felt by reason of the fact that they find it difficult to read article 13 in conjunction with article 8. I therefore, think that this amendment of mine clarifies the position and hope the House will not find it difficult to accept it.

(Amendment No. 50 to amendment No. 454 was not moved.)

(Amendments Nos. 455, 469, 475 and 481 were not moved.)

Mr. Vice-President : Then we shall take up amendment No. 485, first part. The House can well realize that I am going through a painful process in order to shorten the time spent on putting the different amendments to the vote.

Syed Abdur Rouf : I want the first part of the amendment to be put to the vote.

Mr. Vice-President : Then we come to another group, 456, 472, 484 and 495.

(Amendments Nos. 456, 472, 484 and 495 were not moved.)

Mr. Vice-President : The next group consists of amendments Nos. 457, 466, 473 and 494.

(Amendments Nos. 457, 466, 473 and 494 were not moved.)

Mr. Vice-President : Then amendment No. 458 standing in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Shri M. Ananthasayanam Ayyangar: That has already been covered by Mr. Mahboob Ali Baig's amendment.

Mr. Vice-President : Still, it would depend upon the Mover.

Mr. Mohd. Tahir (Bihar : Muslim): Sir, I beg to move:

"That in clause (2) of article 13, after the word 'sedition' the words 'communal passion' be inserted."

Now, Sir, we find that under this clause we are giving powers to the State to make laws as against certain offences such as libel, slander, defamation, sedition and similar offences against the State. Now I want that these words "communal passion" be also added after the word "sedition"—which means, agitating or exciting the minds of one community as against the other.

These words, Sir, libel, slander, defamation, sedition, are the common words found in the Indian Penal Code and fortunately or unfortunately, we find that this word does not find a place in the Indian Penal Code. The reason is very simple, because, the Indian Penal Code and the old laws were framed by a Government which was foreign to us. Now, this is the time when we must realise our merits and demerits. We know that the agitation and the excitement of communities against communities have done a great loss and disservice to our country as a whole. Therefore, Sir, I think that the addition of this word is necessary. To tell the truth, I would say that if in our country which is now an independent country, we are really sincere to ourselves, this word also must find a place in the Constitution. I would request and appeal to Dr. Ambedkar and the House as a whole to give sound reasoning and due consideration for the addition of this word.

At the end, Sir, I may submit that an amendment has been moved by Mr. Munshi and I do not know whether it is going to be accepted or not. In case that amendment is going to be accepted by the House. I would appeal that this word may be given a place in that amendment or wherever it is found suitable. With these words. Sir, I move.

Mr. Vice-President : We come next to amendment No. 459. It is in the name of Mr. Thomas. It is verbal and therefore disallowed.

Next we take up amendments nos. 460, 461 and the second part of 462. I would allow amendment No. 461 to be moved because that I regard as most comprehensive of the three. That is covered by Mr. Munshi's amendment. Is amendment No. 460 moved?

Pandit Thakur Dass Bhargava: I do not want to move it.

Mr. Vice-President : Amendment No. 462; Mr. Kamath.

Shri H. V. Kamath : It is covered by amendment No. 461.

Mr. Vice-President : Amendment No. 462, first part. I was dealing with the second part just now. The first part is more or less a verbal amendment and is disallowed.

Then, amendments Nos. 463 and 464 coming from two different quarters are of similar import. Amendment No. 464, standing in the name of Shri Vishwambhar Dayal Tripathi may be moved.

(Amendment No. 464 was not moved.)

Mr. Vice-President : What about amendment No. 463, in the name of Giani Gurmukh Singh Musafir?

Giani Gurmukh Singh Musafir: Not moving, Sir.

Mr. Vice-President : Then, we take up amendments Nos. 467 and 474. Amendment No. 467 may be moved. It stands in the name of Mr. Syamanandan Sahaya.

Shri Syamanandan Sahaya (Bihar : General): Sir, I beg to move:

"That in clause (3) of article 13, the word 'restrictions' the words 'for a defined period' be added."

Sir, in moving this amendment before the House, what was uppermost in my mind was to see whether actually even in the matter of the three freedoms so much spoken of, namely, the freedom of speech, freedom of association and freedom of movement, we had really gone to the extent that everyone desired we should. I must admit that I did not feel happy over the phraseology of the clauses so far as this general desire in the mind of every body, not only in this House, but outside, obtained. I will, Sir, refer to the wording of sub-clause (b) of clause (1) of article 13. This sub-clause lays down that all citizens shall have the right to assemble peaceably and without arms. This is the Fundamental Right which we are granting to the people under the Constitution. Let us see how this fits in with clause (3) of article 13 which is the restricting clause. Clause (3) lays down that nothing in sub-clause (b) of the said clause (1) shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order restrictions on the exercise of the right conferred by the said sub-clause. Sir, the only right which we are giving by sub-clause (b) is the right to assemble peaceably and without arms. This right to assemble is not a general right of assembly under all conditions. To assemble peaceably is the first condition precedent and there is also a second condition. That condition is that the assembly should be without arms. On the top of these conditions we are laying down in sub-clause (3) that there shall be a further restricting power in the hands of the State. I would much rather that clauses (3) and (4) did not form part of our Constitution. But, if the Drafting Committee and the other people who have considered the matter carefully think that it is necessary to lay down restrictions even in the matter of assembling peaceably and without

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arms, I might respectfully submit that it would be necessary to further restrict this restricting power by saying that any law restricting this power must be for a specified period only. I do not think the House will agree that any State should place on the statute book a permanent law restricting this Fundamental Right of peaceful assembly.

The most that the Constitution could accommodate a particular Government at a particular time under a particular circumstance was to give it the power to restrict this right under these conditions but for a specified and defined period only and that I submit, Sir, is the purpose of my amendment. The best interpretation that one could put on this clause is that the Drafting Committee has erred too much on the cautious side in this matter and they have probably kept the Government too much and the citizens too little, in view. I will submit that both in sub-clauses (3) and (4) the words 'for a defined period' should be added in order that if a State at any time has to pass legislation to restrict these rights, they may do so only for a period. It does not mean that once a State has passed such a legislation it is debarred from following it up by a second legislation in time if necessary but we must lay down in the Constitution that we shall permit of no such restrictive law to be a permanent feature of the law of the land. A State should not be empowered to pass a legislation restricting permanently peaceful assembly and assembly without arms. I think such a general power in the armoury of any State, however popular or democratic, would not be desirable. In the larger interests of the country, and particularly at the formative stage of the country, to give such wide powers in the hands of the State and with regard to such Fundamental rights as, freedom of speech, freedom of assembly and freedom of movement would, I believe, be harmful and result in the creation of a suffocating and stuffy atmosphere as opposed to the free air of a truly free country. Sir, I move the amendment and commend it to the acceptance of the House.

(Amendment No. 470 was not moved.)

Mr. Vice-President : 471 is disallowed as verbal. Nos. 476 and 477 are of similar import. I allow 476.

The Honourable Dr. B. R. Ambedkar: Sir I move—

"That in clause (4) of article 13, for the words 'the general public' the words 'public order or morality' be substituted."

These words are inappropriate in that clause.

Mr. Vice-President : 477 is identical, 479, 480 and 486 are of similar import.

(Amendments Nos. 479, 480 and 486 were not moved.)

Mr. Vice-President : 482 and 483.

(Amendment No. 482 was not moved.)

Mr. Vice-President : 483—Sardar Hukam Singh.

Sardar Hukam Singh: Sir, I beg to move:

"That in clause (5) of article 13, after the words 'existing law' the word 'which is not repugnant to the spirit of the provisions of article 8' be inserted."

The Honourable Dr. Ambedkar has rightly appreciated our fears and we feel that is the object of most of the amendments that have been moved. Certainly there are fears in our minds that if these articles stand independently—articles 8 and 13,—then there is a danger of different constructions being put on them. Dr. Ambedkar has emphasised that if relevant articles of the Constitution are in question, all those articles that relate to one subject shall be taken into consideration when some construction is going to be put by any Court and then article 8 would govern because it says that "All laws in force immediately before the commencement of this Constitution in the territory of India, in so far as they are inconsistent with the provisions of this Part, shall to the extent of such inconsistency, be void". That we have adopted, and this

is what we feel that it should be made clear that certainly those parts which are inconsistent would be void to that extent. If that is the object as Dr. Ambedkar has explained, then why not make it clear in this section as well. Where is the harm? I do not see that we would lose anything or that it would change the beauty of the phraseology even if we make it clear that these provisions are subject to article 8. This is to be admitted that there are certain laws in force just at present that restrict the liberty of the people. For instance I can quote the Land Alienation Act in Punjab. That allows only certain castes to purchase land of their own caste and precludes other castes to purchase that land. If this distinction were based on some economic ground, if it were to be enacted that all small tillers' rights would be safeguarded and their small lands would not be alienable, we could understand that alright and such a provision would be welcome. But when the discrimination is there, we too feel that such a law should stand abrogated so far as it is inconsistent with the provision in clause (5) of article 13. Because that gives freedom to acquire hold and dispose of property and if that law remains—Land Alienation Act, as it is and definition is not changed of the "agriculturist", there would be a conflict and there might be certain constructions by Court which would be unfair. So if that is the object as Dr. Ambedkar has explained that article 8 would govern, then we should make it clear and that is why I have suggested that after the words 'existing law' the words 'which is not repugnant to the spirit of the provisions of article 8' be inserted. That is my object and it should be made clear beyond any doubt.

Mr. Vice-President : Then we come to amendment No. 485, second part, standing in the name of Syed Abdur Rouf, and the first part of amendment No. 488 standing in the joint names of Dr. Pattabhi Sitaramayya and others. The latter seems to be the more comprehensive of the two and may be moved.

(Amendment No. 488 was not moved.)

Mr. Vice-President : Then in that case, the second part of amendment No. 485, standing in the name of Syed Abdur Rouf may be moved.

Syed Abdur Rouf: Sir, I beg to move:

"That in clause (5) of article 13, for the word 'State', the word 'Parliament' be substituted."

Sir, in sub-clauses (d), (e) and (f), we have got the most valuable of our Fundamental Rights. But clause (5) seems to take away most of our rights, because States have been given power to restrict, to abridge and even to take away the rights if and when they like. We remember the word 'State' has been defined as to include even local authorities etc. within the territory of India or under the control of the Government of India. Even village panchayats, small town committees, municipalities, local boards all these, to a certain extent become States, and it has been left to these States to deal with these valuable Fundamental Rights. Sir, I will bring one instance before you. Suppose, due to political views, a particular village or panchayat area is divided between the majority and the minority. Now, if the majority of the Panchayat by a resolution asks the minority not to move freely in the area or to reside there, or to dispose of their property, which law will prevent the majority from doing so, and which law is there to safeguard the interests of the minority? As these are most valuable rights, the State should not be trusted with making laws regarding these rights. In my opinion, Sir, it is only the Parliament which can to the satisfaction of the people, deal with these questions. As it is very dangerous to leave this power in the hands of the small States, which will comprise even village panchayats, we must be very careful and, therefore, I suggest that in place of 'State', the word 'Parliament' should be substituted.

Mr. Vice-President : Then amendments Nos. 487, 489 and 490 are of similar import. No. 487 may be moved.

(Amendment No. 487 was not moved.)

Mr. Vice-President : Amendment No. 489 standing in the joint names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir: Sir, I beg to move:

"That in clause (5) of article 13, the word 'either' and the words 'or for the protection of the interests of any aboriginal tribe' be omitted."

Sir, I am not going to make any speech in this connection, but want only to submit that the removal of these words would make the clause of a general character, which certainly includes the safeguards of the interests of the aboriginal tribes as well. I understand the Drafting Committee was also of this opinion, but I do not know why this clause was worded in this manner. Anyhow, I think it better to delete the words in the manner I have suggested.

Mr. Vice-President : Amendment No. 490 is the same as the one now moved, and it need not be moved.

Amendment No. 488, second part, and No. 491 are of similar import. Amendment No. 491, standing in the name of Dr. Ambedkar may be moved.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I move:

"That in clause (5) of article 13, for the word 'aboriginal', the word 'scheduled' be substituted."

When the Drafting Committee was dealing with the question of Fundamental Rights, the Committee appointed for the Tribal Areas had not made its Report, and consequently we had to use the word 'aboriginal', at the time when the Draft was made. Subsequently, we found that the Committee on Tribal Areas had used the phrase "Scheduled Tribes" and we have used the words "scheduled tribes" in the schedules which accompany this Constitution. In order to keep the language uniform, it is necessary to substitute the word "Scheduled" for the word "aboriginal".

Mr. Vice-President : There is, I understand, an amendment to this amendment, and that is amendment No. 56 of List I, standing in the name of Shri Phool Singh.

(Amendment No. 56 of list I was not moved.)

Mr. Vice-President : That means this amendment No. 491 stands as it is.

Then we come to amendment No. 488.

(Amendment No. 488 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (6) of article 13, for the words 'public order, morality or health', the words 'the general public' be substituted."

The words 'public order, morality or health' are quite inappropriate in the particular clause.

Mr. Mohd. Tahir : *[Mr. President, my amendment No. 500 is as follows :

"That after clause (6) of article 13, the following new clause be added.

'(7) The occupation of beggary in any form or shape of person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law.' "

Sir, I have moved this amendment for this reason that, if the House agrees with this amendment surely it will result in solving to a great extent the difficulties of labour which exist in our country. Our industries, which are very vital and in many places have failed due to lack of labour, can flourish to a great extent. Besides, I would like to state that in our country *thousands, lakhs* nay *crores* of human beings will imbibe the spirit of self-reliance and self-respect. We see that in our country many able-bodied persons who

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* [ ]Translation of Hindustani speech.

can work and can earn their livelihood, are to be found begging on road sides. If you tell them that they can work, that they can maintain themselves by earning their livelihood and can do good to their country by their labour, they would say in reply "Sir, this is our ancestral profession and we are forced to do it". I would like to say that there are so many countries on this earth: but if you look around, you will find this ugly spot only on the face of our country. Therefore, I want that there should be some such provision in our Constitution as would be beneficial to our country. Obviously, those that are helpless, for instance many of our unfortunate countrymen, who are blind, lame and cannot use their hands and feet, really deserve some consideration. In such cases begging on these and other similar grounds may be justified. But even in this matter, I would submit that the State should be responsible and some such institution or home be founded in some places where they might be brought up, while those that are able-bodied and healthy should be forced to work. By doing so, our labour problem will be solved to a great extent and crores of human beings, who have taken to begging as profession, would be prevented from doing so. This will create in them the spirit of self-respect and self-reliance. Therefore, I hope that Dr. Ambedkar will accept this amendment of mine and the House will also help me by accepting it. With these words, I submit this amendment for the consideration of the House.]

The Assembly then adjourned till Half Past Nine of the Clock on Thursday, the 2nd December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 2nd December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Half Past Nine of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee), in the Chair.

DRAFT CONSTITUTION—(*Contd.)*

Article 13—(*Contd*.)

Mr. Vice-President (Dr. H. C. Mookherjee): We shall resume discussion of Article 13.

I should like to know the views of the House as to the way we should deal with the following amendments—we postponed consideration of these amendments yesterday:

Amendments No. 442, No. 499, second part of No. 443, No. 468 and No. 501.

Shri M. Ananthasayanam Ayyangar (Madras : General): May I suggest that in as much as these relate to the free choice of vote and some other matters which are not already prescribed in article 13, these may stand over and be allowed to be moved as a separate clause later on in the Fundamental Rights, and that we need not delay the passing of article 13, amendments with respect to which have already been moved, and the discussion may start?

Mr. Vice-President : Is that the view of the House?

Honourable Members: Yes, yes.

Mr. Vice-President : Then we shall proceed with the general discussion of the article. A large number of honourable Members desire to speak on this article. Therefore, with the permission of the House, I would like to limit the duration of the speeches to ten minutes each ordinarily. I shall extend the time wherever I consider necessary. Have I the permission of the House to fix this time-limit?

Honourable Members: Yes.

Shri H. V. Kamath (C. P. and Berar : General): On a point of order, Sir. Two amendments have been held over. Unless they are moved, how can general discussion on the article as a whole go on?

Mr. Vice-President : What are those amendments please?

Shri H. V. Kamath: No. 499 and No. 442.

Mr. Vice-President : They will form part of a new clause.

Sardar Bhopinder Singh Man (East Punjab : Sikh): *[Mr. Vice-President, I regard freedom of speech and expression as the very life of civil liberty, and I regard it as fundamental. For the public in general, and for the minorities in particular, I attach great importance to association and to free speech. It is through them that we can make our voice felt by the Government, and can stop the injustice that might be done to us. For attaining these rights the country had to make so many struggles, and after a grim battle succeeded in

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* [ ] Translation of Hindustani speech.

[Sardar Bhopinder Singh Man]

getting these rights recognised. But now, when the time for their enforcement has come, the Government feels hesitant; what was deemed as undesirable then is now being paraded as desirable. What is being given by one hand is being taken away by the other. Every clause is being hemmed in by so many provisos.

To apply the existing law in spite of changed conditions really amounts to trifling with the freedom of speech and expression. From the very beginning we have stood against the existing laws, but now you are imposing them on us. You want to continue the old order so that there should be no opportunity of a trial, of putting up defence and of an appeal. If a meeting is held, then for breaking it up lathis may be used, and people may be put into jail without trial; their organisations may be banned and declared illegal. We do not like this shape of things. If you want to perpetuate all that, then I would like to say that by imposing all these restrictions you are doing a great injustice. There are a few rights to which I attach very great importance. You have included them in the articles relating to directive principles of State policy, and so we cannot go to a Court of law for their enforcement. You are diluting these rights with the result that nothing solid remains.

Mr. Vice-President, I want that these rights should not be restricted so much, and all opposition that is peaceful and not seditious should get full opportunity, because opposition is a vital part of every democratic Government. To my mind, suppression of lawful and peaceful opposition means heading towards fascism.]

Seth Govind Das (C. P. and Berar : General): *[Mr. Vice-President, article 13 is the most important of all the articles concerning Fundamental Rights. The rights that have been granted to us by these articles are all very important. Yesterday Shri Damodar Swarup Seth and Shri K.T. Shah moved their amendments in this House. The purport of the amendments is that the rights which have been given to us with one hand are being taken away by the other hand. This may be true to some extent but if we consider the present national and international situation as also the fact that we have achieved freedom only recently and our government to is in its infancy, we shall have to admit that it was necessary for the government to retain the rights it has done after granting these fundamental rights. We should see what is happening in our neighbouring country, Burma. We should also keep in view what is happening in another great country of Asia—I mean war-torn China. In view of what is happening in our neighbouring countries and of the situation in our own country, we should consider how necessary it is that the Government should continue to have these powers.

I would have myself preferred that these rights were granted to our people without the restrictions that have been imposed. But the conditions in our country do not permit this being done. I deem it necessary to submit my views in respect to some of the rights. I find that the first sub-clause refers to freedom of speech and expression. The restriction imposed later on in respect of the extent of this right, contains the word 'sedition'. An amendment has been moved here in regard to that. It is a matter of great pleasure that it seeks the deletion of the word 'sedition'. I would like to recall to the mind of honourable Members of the first occasion when section 124 A was included in the Indian Penal Code. I believe they remember that this section was specially framed for securing the conviction of Lokamanya Bal Gangadhar Tilak. Since then, many of us have been convicted under this section. In this connection many things that happened to me come to my mind. I belong to a family which was renowned in the Central Provinces for its loyalty. We had a tradition of being

*[ ] Translation of Hindustani speech.

granted titles. My grandfather held the title of Raja and my uncle that of Diwan Bahadur and my father too that of Diwan Bahadur. I am very glad that titles will no more be granted in this country. In spite of belonging to such a family I was prosecuted under section 124 A and that also for an interesting thing. My great grandfather had been awarded a gold waist-band inlaid with diamonds. The British Government awarded it to him for helping it in 1857 and the words "In recognition of his services during the Mutiny in 1857" were engraved on it. In the course of my speech during the Satyagraha movement of 1930, I said that my great-grandfather got this waist-band for helping the alien government and that he had committed a sin by doing so and that I wanted to have engraved on it that the sin committed by my great-grandfather in helping to keep such a government in existence had been expiated by the great-grandson by seeking to uproot it. For this I was prosecuted under section 124 A and sentenced to two years' rigorous imprisonment. I mean to say that there must be many Members of this House who must have been sentenced under this article to undergo long periods of imprisonment. It is a matter of pleasure that we will now have freedom of speech and expression under this sub-clause and the word 'sedition' is also going to disappear.

The next matter to which I would like to draw your attention is sub-clause (b) of this article. The expression "to assemble peacefully without arms", occurs in it, I want to draw your attention to the words "without arms" in particular. I agree that we should have the right of assembling in this way without arms only. We had accepted the creed of non-violence and through it we have achieved freedom. It is true that in the present world situation we are compelled to maintain armies. But I hold that the welfare of humanity can be secured by means of non-violence alone. We should have a right of assembling but assembling without arms.

I would also like to draw your attention to the two following sub-clauses and these are sub-clauses (f) and (g) which run as follows:

> "to acquire, hold and dispose of property." and
>
> "to practise any profession or to carry on any occupation, trade or business."

Speaking for myself I may say that just as I hold that humanity cannot achieve its welfare except through non-violence so also I do believe that there cannot be stable peace, unless and until private property is abolished. I am not a socialist or a communist but at the same time I hold that what the big capitalists, traders, zamindars, talluqdars have to do to protect their property does not allow of their enjoying true happiness. It is not true to say that people lacking wealth alone are unhappy. They are no doubt unhappy but in the present economy the moneyed are more unhappy than the moneyless, and this band of gold is today crushing the richman's neck. This wealth has been in their possession for long and that is why they are anxious to retain it. It is not for pleasure that they want to keep it. If they are forcibly deprived of their wealth, socialism or communism would not be established. The example of Russia bears testimony to it. Individual property was expropriated there by force and the result has been that it could not be destroyed. On the other hand it is increasing. But if we make an effort to change values in this country and the world and bring about such a psychological atmosphere as makes people eager to rid themselves of the burden of property, we would have reached the desired goal and there would then be the possibility of the establishment of a true socialistic state. There has been change in values in the world from time to time. It is a historical fact that at one time man devoured man. At that time the man who had the capacity of devouring the greatest number

[Seth Govind Das]

of men, must have been worshipped by the society, because he must have been recognised as the bravest among them. Times changed to usher in the epoch of slave-trade. Respectability was judged by the number of slaves one had. Those conditions changed. Today the capitalists are characterised by our society as plunderers and dacoits. They no doubt make such remarks about capitalists, but I may be excused for saying that the majority of the socialists are such that if they were to get hold of this property, they would forsake socialism. The necessity is for a change in outlook. If there is a change in values by the propagation of these ideas in society and if the capitalists are looked down upon as thieves and pilferers by everyone they would not like to keep their wealth. Such a change of mind and heart can be brought about only through non-violence. I hope that in time to come the articles concerning property will not find a place in the Constitution.

I heartily support the whole of the article 13 on the Fundamental Rights.]

Shri Jaipal Singh (Bihar : General): Mr. Vice-President, Sir. So far as I am concerned, this particular article in no way frightens me, although the various fundamental rights have been hedged in by so many exceptions. To me it is obvious that whatever we put into the Constitution, its value, its use to us will depend upon the way we work all these things. But there are one or two things on which I would like Dr. Ambedkar to enlighten me. The first point on which I would like his clarification is in regard to the amendment which he has moved, amendment No. 491, wherein he seeks to substitute the word "aboriginal" by the word "scheduled". Sir, I am always at a disadvantage whenever anything affecting aboriginals has to be discussed at this stage for the obvious reason that the two reports of the Tribal sub-committees have not been fully discussed on the floor of this House, with the result that the House has not been able to obtain its collective view point or arrive at a collective decision as has been the case with all the other articles, that is to say, articles which affect the non-tribals of our country.

Take the question of this word 'tribal'. As far as I know neither of the sub-committees had gone into the work of scheduling. I know it for a fact that the sub-committee of which I was a member did nothing of the sort and, in fact, bodily the Drafting Committee has just put into the Draft Constitution whatever obtained in the Government of India Act. Now, look at the list.

My second point that I want to have clarified is whether the advisory councils or the regional councils, which are envisaged in the recommendations of the two sub-committees, will operate outside the so-called scheduled areas. If they do not, then I want to know from Dr. Ambedkar what is going to happen to the Adibasis, who are in millions, outside those scheduled areas. As far as I can understand the language of the Constitution, the regional councils and the advisory councils are to advise the Governor to participate as it were in the legislation of the State only in regard to the scheduled areas. Well, once it is accepted that the regional councils and the advisory councils may operate also outside the scheduled areas then my point is met.

Take the case of West Bengal. In West Bengal, according to what is proposed, there shall be no scheduled areas; in West Bengal there are 16 lakhs of Adibasis. I want to know what is going to happen to them. There is no regional council; there will be no advisory council there. Who is going to advise the Governor in regard to their welfare, in regard to whatever should be done or should not be done, what act may operate for them or against them? I think that is a point that has to be clarified.

Sir, the Tribes inventory that is in this Draft Constitution is most unsatisfactory. I will exemplify one or two cases. Sir, you yourself come from West Bengal. Bengal has been carved into three provinces, Bengal united, now West Bengal, Bihar and then Orissa. The British had their own arguments for their territorial boundaries. At the present moment, you know it only too well that none of these three provinces seems to be satisfied with the boundary alignment. West Bengal wants something of Bihar; Bihar also wants something of West Bengal. Orissa also is clamouring for some more territory from Bihar. That is the present political situation, but, how does it affect the Adibasis? Now the Tribal Sub-Committee in a way has been outmoded to this extent that lakhs and lakhs of States people have been integrated into provinces. Take the question of Orissa. When the Tribal Sub-Committee went to Orissa it had to deal only with those areas that were excluded or partially excluded. The present position is that about 24 States have been integrated into Orissa and several others into the Central Provinces. Most of these States are overwhelmingly populated by Adibasis. What happens in regard to them? Whatever scheduled areas the Sub-Committee has recommended is really insignificant. It does not cover the whole Adibasis population, particularly of the two provinces of the Central Provinces and Orissa.

I would like Dr. Ambedkar, therefore, to tell me quite clearly that whatever provisions, whatever little concessions that he desires this Constitution should have, will apply also to those areas that are not particularly specified within the scheduled areas.

Then I come to article 13 (1) (b), namely, to "assemble peaceably and without arms". I have to point out that this matter of the Arms Act has been very mischievously applied against the Adibasis. Certain political parties have gone to extremes to point out that because Adibasis carry bows and arrows, lathis or axes, which they do daily as a normal part of their life, which they have done for generations and generations, and what they are doing today they have done before, that they are preparing for trouble.

Let me give you the instance of the Oraons. We have in this Assembly only one Oraon member. Now the Oraon group of Adibasis constitutes the fourth largest block of Adibasis in India. Just about now, they have what we call Jatras or Melas. These are annual occasions for their cultural activities. They have a certain ceremony in which the head of the Oraon village will carry the flag and the rest of them carry lathis with them and proceed into the various akhadas or villages. It is a festival for the people; they have done it in a harmless way for generations and generations and, now we have been told last year and the year before last that we should not carry weapons. I do not mind pointing out there are several Members here from Bihar who will never be able to get back to their homes unless they are escorted with people and with arms. In my own part, we live in the jungles and every one, even women, may I point out, carry what might be designated arms, but they are not arms in that sense. Whenever we have to hold meetings, if people come with their own usual things, I want to know whether it is going to be interpreted that we are assembling unpeaceably and carrying arms for an unlawful purpose. These are the only points, Sir, that I want to have clarified.

I will give one more instance. Every seven years, it is the custom in Chota Nagpur to have what they call. Era Sendra, Janishikar. Every seven years, the women dress as men and hunt in the jungles—dressed as men, mind you. That is the occasion when naturally women like to show masculine prowess. They arm themselves like men with bows and arrows, lathis, belas and so forth. Now, Sir, according to this particular article in the Constitution, the Government might interpret that women every seven years were getting together for a dangerous purpose. I urge the House to do nothing that is going to upset the simple folk. They have been among the most peaceful citizens in our

[Shri Jaipal Singh]

country and we should be very very cautious in doing anything which might be misunderstood by them and lead to trouble.

Sir, I have, as I have said, no difficulty in accepting this particular article, but I thought I should seek clarification from Dr. Ambedkar on these two particular points.

Mr. Vice-President : Mr. Hanumanthaiya.

Kazi Syed Karimuddin : (C. P. & Berar : Muslim): I have not caught your eye, Sir.

Mr. Vice-President : Unfortunately, I have only two eyes. They will be turned to your side the next time.

An Honourable Member : Why do you not have a third eye, Sir?

Mr. Vice-President : Why can you not come to the front Bench? I say it is the fault of the House that they unanimously chose an old man as the Vice-President. His eye-sight is not as good as that of younger men. Mr. Hanumanthaiya.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, this article incorporates some of the most cherished rights of us all. For the last sixty and odd years during which the freedom movement was taking shape, we made innumerable speeches and sacrifices in order to win the fundamental rights that are incorporated in this article. But, the point of view of many members here as well as the opinion of some people outside is that these fundamental rights have been so much curtailed that their original flavour is lost. Sir, every law, whether it is in the form of a right or a duty, takes shape according to the condition of the society then prevailing. We went through a course of suffering and sacrifice which were imposed upon us by the repressive laws of British imperialism; this naturally made us votaries of unadulterated fundamental rights and that was our hope. But, ultimately when we emerged out of those innumerable difficulties, we are faced, within our own society, with elements who want to take advantage of those rights in order to do violence to men, society and laws. Hence it is that the Drafting Committee as well as the Governments in the various provinces and the Centre, are hard put to safeguard these rights in their pristine purity. No man who believes in violence and who wants to upset the State and society by violent methods should be allowed to have his way under the colour of these rights. It is for that purpose that the Drafting Committee has thought it fit to limit the operation of these fundamental rights.

The question next arises whether this limiting authority should be the legislature or the court. That is a very much debated question. Very many people, very conscientiously too, think that the legislature or the executive should not have anything to do with laying down the limitations for the operation of these fundamental rights, and that it must be entrusted to courts which are free from political influences, which are independent and which can take an impartial view. That is the view taken by a good number of people and thinkers. Sir, I for one, though I appreciate the sincerity with which this argument is advanced, fail to see how it can work in actual practice. Courts can, after all, interpret the law as it is. Law once made may not hold good in its true character for all time to come. Society changes; Governments change; the temper and psychology of the people change from decade to decade if not from year to year. The law must be such as to automatically adjust itself to the changing conditions. Courts cannot, in the very nature of things, do legislative work; they can only interpret. Therefore, in order to see that the law automatically adjusts to the conditions that come into being in times to come, this power of limiting the operation of the fundamental rights is given to the

legislature. After all, the legislature does not consist of people who come without the sufferance of the people. The legislature consists of real representatives of the people as laid down in this Constitution. If, at a particular time, the legislature thinks that these rights ought to be regulated in a certain manner and in a particular method, there is nothing wrong in it, nothing despotic about it, nothing derogatory to these fundamental rights. I am indeed glad that this right of regulating the exercise of fundamental rights is given to the legislature instead of to the courts.

Then, Sir, here in article 13, about seven fundamental rights are incorporated. I wholeheartedly feel the Drafting Committee has done well in incorporating the first four freedoms, freedom of speech and expression, freedom to assemble peaceably and form associations, and to move freely throughout the territory of India. The next three clauses, to reside and settle in any part of the country, to acquire, hold and dispose of property, and to practise any profession, or to carry on any occupation, trade or business, Sir, in my opinion do not take the character of fundamental rights. They are not really fundamental rights. They are matters incidental to legislation, that can be passed either by the Parliament or the legislatures of the Units. I find these three rights which are incorporated as fundamental rights in this article 13 are not so treated by any other country except, perhaps, Ireland and Switzerland. In America, we do not find these three rights incorporated as fundamental rights. To acquire property, to settle down in a particular town, to practise any trade or profession in any part of the country he likes, are not really fundamental rights. I may be pardoned if I say this that the men who did the work of shaping these constitutional proposals, a majority of them, have come from the upper most strata of society. After all, they can think of what suits their psychology and their class or their strata of society. It is from that point of view they have framed these three rights. Really speaking, whether these three rights are fundamental or not, we ought to judge from the point of view of the people of the villages and people of the Units. I for one feel that these are rather not rights, but liabilities that are sought to be imposed upon the people of the villages and of the Units. I very much wish that the Drafting Committee and this Assembly could now delete these three rights and relegate them to the discretion of the legislature of the Units but now it is too late and we have to accept them somehow or anyhow. Here arises a conflict in the future that the Units in order to safeguard the rights and interests of the people within their respective areas, may try to circumvent these three rights that are conferred by this Constitution. It will happen. I have no doubt whatsoever in my mind, that here arises a plentiful source of litigation. Yesterday I happened to read Sir Ivor Jennings' opinion about our Fundamental Rights. He says, the rights conferred in this Chapter and especially in this section are so complicated, are worded in such a verbose manner, that it will be a fruitful source of income to constitutional lawyers. There is a good deal of truth in it. The enunciation of the Fundamental Rights and the exceptions added on by provisos are so worded—and they had to be like that because it is impossible to foresee all exigencies, and make provision for them now alone—that there will be litigation on a scale which none of us have ever seen or contemplated. Every man who feels aggrieved can go to any Court of Law and the Supreme Court will be full of cases between individuals and individuals, between individuals and State, between State and State, between the Central Government and State Governments. This litigation—I do not suppose—will be helpful to the interest of the country. Litigation—I need not argue about it—litigation surely ruins both the Parties to it. There is a Kannada proverb the meaning of which is "a successful party in a case is as good as defeated and a defeated party in a case is as good as dead". And whenever there arises litigation in interpreting these clauses, political controversies also arise conferring

[Shri K. Hanumanthaiya]

fundamental rights in this manner—especially the last three clauses—will continuously raise political storms in the shape of litigation in regard to interpretation of these Fundamental Rights.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, there is no denying the fact that this article is the very life of the Draft Constitution. Without this article the Constitution will be a dead letter. It must also be understood that the Rights contemplated under article 13 are admittedly inalienable rights and the point involved is whether these rights can be delegated to the Governments or we are going to lay down principles which cannot be subject matter of legislation or the vagaries of the legislatures. My submission is that these are Fundamental Rights regarding individuals as contemplated under article 13 which cannot be made subject matter of the vagaries of the Legislatures. Clauses (2) to (6) of this article rob the people of the only guarantee which will make them secure and my submission is that clauses (2) to (6) are very dangerous clauses. Suppose, in a State there is a political party, which is hostile to the Central Government and they frame laws to the great detriment of the political minority or the religious minorities. What can be done? People have to suffer and there would be untold miseries. Particularly the wording 'subject to operation of existing laws' is very unjust. What is the situation today in India? Practically there is a state of siege. There are Goonda Public Safety Act, etc. in all the provinces in which there is neither appeal, nor any warrant is necessary for arrest, and searches can be made without justification. In spite of this, the article lays down that the existing laws will be recognized. These unjust laws which do not provide appeals and which do not provide any proper representation will be recognized under article 13. There is no doubt that we are living in an emergency period but that does not mean that article 13 should be in consonance with emergencies. Another part of the article is the right to assemble peacefully and without arms. What greater restriction could have been laid down by the framers of the Constitution than this and in spite of that the legislatures of the States are empowered to have more restrictions as embodied in clauses (3) and (4). Now the point is whether a particular legislation is in the interest of the people, or whether that can be delegated to the judiciary or to the States' Legislatures. My submission is that you must realise that we cannot entrust the interpretation of these clauses in the Fundamental Rights to the vagaries of legislatures. In the State Legislatures the majority is capable of practically oppressing the minorities, political or communal. The very purpose of this Fundamental Right is being defeated. The Fundamental Rights are being enacted only with a view to placing restrictions on the legislation. By these clauses (2) to (6) we are enlarging the scope of this article 13 and we are enlarging the scope of the powers of the Provincial Legislatures or States. This is entirely to the detriment of the political or religious minorities. If this article as it stands is passed, my submission is that it will be taking away those rights which are given in article 8 of the Constitution. There is no parallel to these restrictions in any Constitution of the world. In the American Constitution all these rights have been entrusted to the judiciary simply because the political parties who are elected from time to time cannot be entrusted with the interpretation of laws.The main principle should have been whatever is not forbidden should have been allowed. Apart from that, two amendments have been moved, one by Mr. Mohamed Ismail and the other by Mr. Tahir. My submission is that both these amendments are very innocent and both these are very necessary for the protection of the minorities. Mr. Ismail's amendment advocates that personal law should be respected and this should be embodied in this Constitution. The people outside and the Members of the Constituent Assembly must realize that a Muslim regards the personal law as part of the religion and I really assure you that there is not a single Muslim in the country—at least I have not seen one—who

wants a change in the mandatory provision of religious rights and personal laws and if there is any one who wants a change in the mandatory principle, or religion as a matter of personal law, then he cannot be a Muslim. Therefore if and if there is any one who wants a change in the mandatory principle, or religion—does not mean that people should have no religion—if this is the view of the minority Muslims or any other minority that they want to abide by personal law, those laws have to be protected. The amendment of Mr. Tahir is very important and I feel that every Member of the Constituent Assembly must realize that it is important because we have seen after 15th August, whether Muslims are responsible or the Hindus are responsible for communal passion, it has eaten away everything that is good in society. It was really a canker that was destroying the society and would have done so but for the Central Government. Then communal passion should be made an offence. In my opinion this is a very vital amendment that has been moved and it should be accepted by Dr. Ambedkar; Sir, as I have said even Dr. Ambedkar in his book 'States and Minorities' has said—

"No law shall be made abridging the freedom of the press, of association and of assembly except for consideration of public order and morality."

In 1947 he was agreeable that only the first part of article 13 should be enacted in our Constitution and within a year he is so changed that he has placed so many restrictions that take away what has been given under article 8.

Mr. Vice-President : You seem to make the mistake that Dr. Ambedkar is responsible for everything connected with this Draft Constitution. There was the whole Drafting Committee.

Kazi Syed Karimuddin : My submission is that if you take the opinion of the minorities in this House—a Sikh representative has spoken, and I am speaking now—and if you take votes, you will find that the minorities in the country will say that article 13 is not sufficient protection for them. Therefore, I earnestly plead for deletion of clauses (2) to (6). I strongly support the other two amendments to which I have referred. If article 13 is passed as it stands, it is not acceptable to the minorities. It is no freedom of speech that you are guaranteeing. It is no freedom of the press that you are giving. You are giving by one hand and taking it away by the other.

Chaudhari Ranbir Singh (East Punjab : General): Mr. Vice-President, Sir, I am not in agreement with those who are for abolition of these provisions from the text during the transitional period. This is why I gave notice of two more provisions to article 13. They are as under:

"That the following new clauses (7) and (8) be added to article 13:

'(7) Nothing in sub-clauses (d), (e) and (f) of the said clause shall affect the operation of any existing law or prevent the State from making any law imposing restrictions on non-agriculturists to acquire and hold agricultural land, for the protection of the interests of the tillers of the soil or the peasantry.

(8) Nothing in sub-clauses (d), (e) and (f) of the said clause shall prevent the State from making laws to declare the minimum of economic holdings of land inalienable'."

Sir, after further consideration, I changed my mind and did not move these amendments, because I think in sub-clause (5) of the article, the words "in the interests of the general public" denote, mean and cover my point that whenever the imposition of restrictions is found to be necessary for the protection of the interests of the tillers of the soil and labourers, the Governments will have the right to impose the necessary restrictions on any section of the society, or may allow to continue such laws as are already in existence, which the Governments think are necessary for the protection of the interests of the peasantry or labourers.

I come from East Punjab, and there is a law which is known as the Land Alienation Act, according to which certain classes are debarred from acquiring

[Chaudhari Ranbir Singh]

land, by law. I agree with my Friends, specially Harijans who advocate that the Harijans and other persons who are actually the tillers of the soil should have the right to acquire land. But I fail to understand the argument that each and every person whether he is a tiller of the soil or not, should be put on a par with the tillers of the soil, and should have the liberty to acquire agricultural land. If that is to be the case, then we will be creating a new problem—the problem of zamindaries,—the same problem of zamindaries which we are abolishing or have promised to abolish from our country. In several provinces, laws for the abolition of the zamindari system have already been enacted. As regards the Punjab, I am of the view, that it cannot be denied that the absence of zamindari system in the Punjab in its acute form as it exists in other provinces is the result of the Land Alienation Act, and this is the real reason why the agriculturists are in a more advanced position in the Punjab than in other provinces. I therefore, feel very strongly and rightly that the legislatures of the State and the various governments should have the full liberty to impose restrictions on the non-tillers of the soil on acquiring or holding agricultural lands, and to declare a minimum economic holding of land inalienable, for the protection of the interests of the tillers of the soil or the peasantry.

Moreover, the overwhelming majority of the population of our country depends on agriculture and they are the tillers of the soil. So the words "general public interests" can mean only the interests of the peasantry and the labourers, and not only the interests of the vocal middle intelligentia and vested people.

Mr. Vice-President : Maulana Hasrat Mohani (*Cheers*) I am glad the House recognises the excellent services rendered by Maulana Hasrat Mohani to this country. He was the first to stand for total independence of our Mother-Land.

Maulana Hasrat Mohani (United Provinces : Muslim): *[Mr. Vice-President, when I rose to speak, my first impulse was to support whole-heartedly the amendment moved by Mr. Kamath and even now I have come here with that idea. In the later speeches and amendments, one amendment has been moved by Mr. Mohamed Ismail of Madras and I give my full support to it. Besides, I also support the amendment of Mr. K. T. Shah. Mr. Mohamed Ismail in the second part of his amendment has made mention of personal liberty. Mr. K.T. Shah's amendment is also of similar nature. I shall speak at the end about his amendment. First of all, I would like to give full support to Mr. Kamath's amendment. Mr. Kamath has said that everyone should have the right to bear arms. This is a test amendment. If Dr. Ambedkar and his committee are honest, then surely they ought to accept this section and include it in the article at once. If he wavers or raises any objection as I know he is capable of doing, as Dr. Ambedkar's legal abilities are established, and if he wishes, he can turn night into day and day into night and can prove it conclusively,—then I would like to tell him that this is a test amendment and, if you do not include it, it would mean that your tendency is the same as that of the British Government. You know what the Britishers had done. They had promulgated the Arms Act in India. The result was that all the inhabitants of Hindustan were kept as imbeciles. If you also have the same design, then it is a different matter. But if there is any national Government and an Indian Government, then there is no reason why you should deprive anybody of this right. If you too will forge an Arms Act and will deprive the people of this right, then I would say that your attitude and way of doing things is much worse than that of the Britishers. It will be much worse. The Arms Act, enforced by the British Government, was applicable to one and all with the exception of the ruling class. We were under the impression that under our own Government this restriction will be removed. Unfortunately at present here we have

*[ ] Translation of Hindustani speech.

a party Government and they want to retain it, so that the Act may be applied against their political opponents and may not be enforced against their own party men.

On the basis of my own experience, I would like to say something about U.P. In particular I would tell you about Kanpur city which I represent. The U. P. Government there have singled out the Socialists, the Communists, Independent-Socialists,—including Muslims—Forward Blockists and even those who were suspected of standing against them as rival candidates in the elections and put restrictions on them, and on one plea or the other they were brought under the provision of the Defence of India Act. Some were branded as Goondas, others were stamped as Communists, there were others who were told that they were supporting Hyderabad and collecting funds. There were yet others who were told that they were connected with those members of the Communist Party who are working under-ground and they were sent to jails. In short, they applied this Act against all rival parties, and such was the ill-treatment against the Muslims that every Muslim of position at Kanpur was house-searched and even if a kitchen-knife was found in his house, the Arms Act was applied and he was sent to jail. Some of them have been released and some are still in jails. Therefore, I would like to submit that for you, who are a party Government, this is a test amendment. You ought to accept Mr. Kamath's amendment and give the right of bearing arms to everybody. If you are not prepared to do this, then you will be setting an Indian bureaucracy in place of the English bureaucracy.

Another point which I should like to submit is that the amendments of both Mr. Ismail and Prof. Shah are of similar nature. As regards personal rights and liberty I would like to say that so long as you do not prove anything openly against anybody in a court of law, it should not be lawful to detain anybody under Defence of India Rules, be he your rival party man or any other. If you send somebody to jail under Defence of India Act or under some other ordinance, then what would happen to the right of *Habeas Corpus*, and who would give that right, since the High Court will have no jurisdiction over it? And even if High Court interferes in one or two cases, it does not mean that it will be possible in all cases. Therefore, I submit that this should not be included and that everybody should have personal liberty.

I would like to submit my third point in few words, namely, regarding Mr. Ismail's amendment which has been supported by several members. I would like to say that any party, political or communal, has no right to interfere in the personal law of any group. More particularly I say this regarding Muslims. There are three fundamentals in their personal law, namely, religion, language, and culture which have not been ordained by human agency. Their personal law regarding divorce, marriage and inheritance has been derived from the Qoran and its interpretation is recorded therein. If there is any one, who thinks that he can interfere in the personal law of the Muslims, then I would say to him that the result will be very harmful.]

I say from the floor of this House that they will come to grief. Mussalmans will not submit to any interference in their personal law, and if anybody has got the courage to say so then I declare.....

Mr. Vice-President : Order, order.

Maulana Hasrat Mohani: He should remain convinced—and I declare in the House—that Mussalmans will never submit to any interference in their personal

[Maulana Hasrat Mohani]

law, and they will have to face an iron wall of Muslim determination to oppose them in every way.

(Interruption)

Shri Vishwambhar Dayal Tripathi (United Provinces : General) : Will you give the right of human sacrifice to those who believe in it and may claim it under the pretext of their personal law?

(More interruptions)

Mr. Vice-President : Will honourable Members please take their seats?

Shri Brajeshwar Prasad (Bihar : General): I rise to support article 13 with all its reservations and safeguards. These restrictions are necessary in our national interest. Let me adduce the reasons for saying so.

An Honourable Member : Is the honourable Member reading his speech?

Mr. Vice-President : He is reading his speech and I have given him permission to do so.

Shri Brajeshwar Prasad : Personal freedom has to be curtailed if the menace of capitalism is to be met. Nation-states of the nineteenth century were not confronted with even a small part of the dangers that confront a modern state. Political conspiracies of international dimensions were unknown. The political criminal in the pursuit of his nefarious designs resorted to methods and anties very well known to the administrators of old. The laws and judicial institutions were strong enough to grapple with these problems. The technique and methods widely employed by modern law-breakers cannot effectively be checked by judicial institutions and ordinary laws of the nineteenth century. The state must be vested with wide discretionary powers and the freedom of the individual must be seriously curtailed if the parasitical class that thrives on profit and exploitation is to be liquidated and the communists are to be checked from endangering the safety and existence of all the institutions of our modern life.

Shri Rohini Kumar Chaudhari (Assam : General) : The honourable Member is reading his speech so swiftly that we cannot follow him. May I suggest that his speech should be taken as read?

Mr. Vice-President : Do you agree, Mr. Brajeshwar Prasad, that it should be taken as read? (After a pause) Mr. Brajeshwar Prasad does not agree to the suggestion made by the Honourable Member Shri Rohini Kumar Chaudhari.

Shri Brajeshwar Prasad : It is wrong to regard the State with suspicion. Today it is in the hands of those who are utterly incapable of doing any wrong to the people. It is not likely to pass into the hands of the enemies of the masses. And constitutional guarantees of individual freedom will not for long remain sacrosanct if the machinery of the State passes into the hands of the reactionaries. If you want to prevent the political reactionaries from gaining political power and ascendancy, the rulers of the land must be vested with large discretionary powers.

In a modern progressive State there is not much conflict between the individual and the State. For the State is composed of individuals. It is we ourselves purged and purified of our selfishness. The individual has no power of his own, separate and distinct from the State. The State and the individual are the two sides of the same coin.

In the nineteenth century the executive authority had not developed the technique and mechanism of the modern State. It had very little part to play in the life of its citizens. The executive authority in the modern State has a dominant part to play. It is not handicapped by any lack of technique.

The needs of modern life, of socialism and collectivism cannot be fulfilled if the State is not vested with ample powers. The trend of modern politics is towards regimentation of ideas and conduct. The doctrines of Mill and Spencer have become thoroughly unrelated to the needs and demands of the age. It is the society and not the individual which has become the object of primary concern and loyalty both of political theorists and actual administrators. The objective conditions of our modern life have relegated the individual from the Olympian heights of honour and glorification accorded by the individualist school to a position of utter insignificance and neglect.

Individual freedom is risky in a community where more than 80 per cent of the people are sunk in the lowest depths of poverty, illiteracy, communalism and provincialism.

It is sheer illusion to think that the personal rights of the individual can be firmly secured if these are laid down in the Constitution in clear language without any reservations and safeguards. The enjoyment of these rights is dependent upon the fulfilment of certain social conditions outside the scope of any constitution. Man can never enjoy the blessings of personal freedom as long as society remains organized on the basis of capitalism, as long as the menace of war and foreign intervention looms large on the horizon, as long as poverty, illiteracy, communalism and provincialism remain in our midst. It is only with the decline of the forces of organized religions and the establishment of a World State based on the ideals of economic equality and political liberty that man will be able to achieve the content of personal freedom.

It is not entirely due to the wickedness or ignorance of constitution makers that there are restrictions on individual rights. The legacy of centuries of backwardness and foreign misrule cannot be wiped out by one stroke of the pen. The concomitants of the age cannot be brushed aside by any constitutional guarantees. Constitutional guarantees merely facilitate the achievement of personal rights, which are essentially of an inward character, to be secured by the exercise of reason and proper conduct. We must think, speak and act properly if we are to obtain and enjoy the rights of personal freedom. It is only with the growth and development of education to communal dimensions that the foundations of personal liberty can be securely laid.

Shri H. V. Kamath : Sir, may I request my Friend to have a few full-stops if not other punctuation marks?

Mr. Vice-President : The Honourable Member's time is up. But what Mr. Kamath said has certainly not added to the dignity of the House.

Prof. Yashwant Rai (East Punjab : General): *[Mr. Vice-President, Sir, the Harijans of the Punjab are very much indebted to the Chairman of the Drafting Committee for having included article 13 in the Constitution. At present it is the custom in the Punjab that only one particular community can purchase land and take to agriculture. But the Harijans, 90 per cent of whom are cultivators, are not permitted to purchase land to cultivate, or to build houses. When this article receives the assent of the House, they will have the facility of purchasing land for building their houses, as also land for agricultural purposes if they have the capacity to do so. I hope that the many handicaps from which the Harijans suffer in Punjab, causing the clashes that are taking place in almost every village between them and the landlords, as a result of which they are kept confined to their houses in some villages, as also their other difficulties will not have to be faced by them in future. They find themselves in their present plight though they thought that the Congress Government would be a national Government and on coming to power it would permit them to purchase land and would remove all their difficulties. Our

*[ ] Translation of Hindustani speech.

[Prof. Yashwant Rai]

Indian National Congress was wedded to the creed that on establishing its Government every one will get house-building and agricultural facilities and no one will have any difficulty on these accounts. People are also realising that now the Congress is in power all these facilities will have to be afforded to the Harijans.

Therefore clause (f) of article 13 is very necessary because it provides the facilities we wanted. I think that the difficulties with which we are faced today will soon disappear. I therefore support this article.]

Shri Rohini Kumar Chaudhari: Mr. Vice-President, Sir, I must congratulate the House for having decided to drop the word "sedition" from our new Constitution. That unhappy word "sedition" has been responsible for a lot of misery in this country and had delayed for a considerable time the achievement of our independence.

While on this article, I should also like to draw the attention of the House to the unhappy condition which had prevailed so far as the relations between us and the people of the tribal areas were concerned. The British Government wanted to keep these regions as their own preserve, not having imagined for a moment that they will have at any time to quit this country. They wanted to keep the tribal people completely under them for all ages to come and they wanted to have the hills as their own place of preserve and therefore they had introduced rules which prevented the ordinary people of the plains from mixing with their brethren in the hills. I am glad, Sir, that in this article we have laid down that all people will be able to travel freely throughout the territory of India. But it is most unfortunate that we cannot do away with the proviso to say that a particular State may lay down a law by which this freedom of movement can be restricted. Sir, I can only draw the attention of the House to a very unfortunate incident which took place even after the achievement of independence. A few months ago some Members of the Central Legislature headed by our friend the Honourable Mr. Santhanam had occasion to pay a visit to the Manipur State. Although the officers of the Provincial Government had allowed us to go there freely, we were held up there for more than an hour by the orders of the Manipur State. I believe that after the passing of this Constitution such a state of things will never occur and that immediately after the passing of this Constitution steps will be taken to allow us free ingress and egress to those parts of the States which are now inhabited by the scheduled tribes. There should be greater friendliness between the scheduled tribes and the people of the plains and all steps should be taken to remove the barriers to our movement in those places.

Then, Sir, I am glad to find in this article that people will be free to carry on their profession in any part of India. That is quite good in so far as it stands on paper, but many times the British Government said they would never allow a lawyer to practise in any of these hills. I believe, Sir, after the passing of this article of the Constitution, steps will be taken to remove any restriction on any professional man practising in any part of India.

It is now my misfortune to have to say a few words about Professor Shah's amendment No. 416. It is very easy, I should say much easier, to deal with one who writes out his amendments and thinks over them. But it is very difficult and dangerous to deal with one who carries all his amendments, thousand and one of them, in his brain and then directly pours them out from his brain on the floor of this House. Sir, amendment No. 416 introduces certain words about things being subject to the provisions of this Constitution, and all those things. On the one hand we find that the House has practically agreed to remove these words "Subject to the provisions of this Constitution".

But we find the Professor Sahib has put that jumble of words in that amendment. Does he want to use these words to rhyme in the Constitution? Poets are fond of using several words just for the sake of rhyming. If it is intended for the sake of rhyming to use all those words, I can understand it, but otherwise I think they are meaningless. I would also warn my friends against the use of the word 'guaranteed'. We have seen, Sir, advertisements of all and sundry articles promising guarantee. I have myself been a victim of such an advertisement. A big full-page advertisement of a certain medicine guaranteed that if you use that medicine for seven days you will benefit your health and become strong like Sandow. The word 'guarantee' was actually there. But what I found after using that medicine for seven or fourteen days was that the medicine had no effect. It did not bring about any improvement in my health. Also in the case of a lot of jewellery in the market, though they were all chemical jewels, the merchants offer guarantee to the effect that the jewellery will retain its brightness and quality. But after a fortnight the brightness disappears and the thing becomes black in colour. So, the use of the word 'guarantee' is very perilous. It is not necessary to use that word in this country. We in India are so much used to this word that when we see it used we begin to suspect it. When we see anything guaranteed, we understand that it is not guaranteed and is not genuine. Therefore it is better to leave the Constitution as it is without the word 'guarantee'. Without that word we can understand it better. Then we shall know that there is no attempt to cover-up anything not wanted. The clause, as it is without the word 'guarantee' is quite all right.

Sir, this article with the amendments which have been accepted has my whole-hearted acceptance.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, this article may be truly stated to be the charter of our liberties and this is probably the most important article in the whole Draft Constitution. In the original form in which it was presented to this House, it was open to many criticisms and they were justified. Now I think it has been materially altered. The promise made by Dr. Ambedkar to accept the amendment of Mr. Bhargava and others gives me hope that this article in its final form will be a real charter of our liberty.

Sir, let us analyse the criticisms made in some of the amendments moved by my friends. First of all, the criticism is that all the provisos were meant to nullify the liberties given in the first clause. But if we carefully examine each of the sub-clauses, we will find that this criticism is not justified. In clause (2), the word 'sedition' has been taken away, and the word 'authority' has been dropped. So that, what remain in clause (2) are the exemptions of laws relating to libel, slander, defamation, or any matter which offends against decency or morality or undermines the foundation of the State. These alone will remain on the Statute Book.

As was pointed out yesterday, even in America where the courts are given absolute power, the Supreme Court has been obliged to limit it. What we are doing is that instead of the Supreme Court we ourselves are limiting this thing. This limitation in the present form is less wide than it originally was. I think this should satisfy the House.

In this connection I only want to say one word more. Clause (1) (a) says that every citizen shall have the right to freedom of speech and expression. As proposed in one of my amendments we should bring in here the freedom of the press. I hope Dr. Ambedkar would bring in some amendment to include freedom of the press in this sub-clause.

As regards clause (3), I am glad that after the addition of the word 'reasonable' it has become a much wider charter of liberty. It now reads:

[Prof. Shibban Lal Saksena]

"Nothing in sub-clause (b) of the said clause shall affect the operation of any law, or prevent the State from making any law, imposing in the interests of public order 'reasonable' restrictions on the exercise of the 'right conferred by the said sub-clause'."

Under this, the existing laws, in so far as they impose restrictions which are not in the interests of public order or morality, are nullified. Everybody will admit that public order has to be provided for. The sub-clause as amended is much better than what it was. The Supreme Court could now lay down what offends against public order and what does not.

Coming to clause (4), must say that labour will now feel that today they have got their charter of liberty. They can now form unions subject to reasonable restrictions in the interests of public order or morality. So, labour today will thank Dr. Ambedkar for accepting amendments which modified the original clause. In the original form you could not hold a meeting because it would be against the wishes of the general public. Now you will have to prove that the decision to ban a meeting is in the public interest or morality. This is the great charter of liberty for labour.

Then I come to clause (5). This qualifies sub-clauses (d), (e) and (f). It says: "Nothing in sub-clauses (d), (e) and (f), shall affect the operations etc. etc." "or for the protection of the interests of the Scheduled Castes". We have added the word 'reasonable' therein. It is very important. The rights such as freedom to move about throughout the country are very important. Some friends pointed out that there are many laws at present in existence in the East Punjab, for instance, which are really very bad and that this clause will not nullify many of them.

And then there is clause (6) which relates to carrying on of professions. After the amendments that have been accepted this clause also has become much better.

One thing more I want to say. Mr. Kamath in his amendment wants the right to bear arms. In most Constitutions throughout the world this right has been recognised. We ourselves throughout recent history have asked that this should be our right. In fact I remember, when Mahatma Gandhi wrote to Lord Irwin in 1930 about the Eight Points, which he wanted to be accepted, one was about this right to bear arms. The question of this right to bear arms dates back to 1878 when, after the mutiny, the British Government disarmed the Nation. I think that after freedom we should at least allow this thing, as only an armed people can support the Government. I hope Dr. Ambedkar will do something about it.

Then as regards sedition, our great leaders like Lokmanya Tilak and others were the victims of section 124-A. I congratulate Dr. Ambedkar for having put in the clause as it has emerged.

Shri H. J. Khandekar (C. P. and Berar : General): *[Mr. Vice-President, I rise to submit to the House my views on article 13. I believe that if the man-in-the-street were to read this article up to sub-clause (g) he would most likely begin to believe that this country has secured its freedom and that every individual within it has also been granted the right of freedom. But if the same person were to proceed further in his study of this article and goes through the sub-clauses (2), (3), (4), (5) and (6) he would revise his opinion and become fully convinced that our country has not as yet attained Swaraj in its correct sense. It would mean that what had been granted by the right hand has been taken away by the left, in the succeeding sub-clauses. I believe

*[ ] Translation of Hindustani speech.

that a majority of the Members of this House hold the same view in this respect as I do.

If we confine ourselves to an examination of clause (1), we find, Sir, that the rights granted to the citizens of India under this article are many. Sub-clause (a) specifically grants freedom of speech and expression—for securing which, as you and the majority of the Members of this House are aware, we resorted to individual Satyagraha under the leadership of Mahatma Gandhi in the year 1941, and as a consequence thousands, nay, hundreds of thousands of people of this country had to rot in the prisons. At that time all of us believed that when Swaraj is established every citizen of this country would also secure for himself the right of freedom of speech and expression. We, no doubt, find that article 13 grants this freedom of speech and expression. But all this has been taken away indirectly by clause (2).

I may point out that the Provincial Governments have recently enacted many repressive laws. I am afraid that article 13 will allow these laws to remain in force even in the future. What is worse, this article leaves scope for the enactment of further repressive laws in future. In several provinces such laws as the Goonda Act, Essential Services Act, and Public Safety Act have been passed. It may come as a surprise if I inform the House that, since the advent of the Popular Ministries, Section 144 has been constantly reigning in the big cities of this country. Consequently there cannot be a public gathering of even five or seven persons in cities, nay, not even for carrying on conversation among themselves or giving vent to their ideas and feelings. If this situation continues also in the future, I am afraid that the freedom which he had been wishing to establish in this country, the freedom that has been granted in Clause (1) (a) of article 13, will be entirely lost under clause (2) of that article.

I feel, Sir, that I should discuss before you each of these sub-clauses, one by one, so that I may be in a position to request you in the end that this article should be sent back to the Drafting Committee with a request that, after having carefully reconsidered it and having put in it what is really required in the circumstances of the country, it should resubmit it to the House. I believe that the House would then pass it with pleasure. But I am afraid that all would be lost if the article is passed as it is today.

Again sub-clause (b) of clause (1) grants, Sir, the right "to assemble peacefully and without arms." But clause (3) of the article takes away the entire significance of this sub-clause. Similarly sub-clause (c) grants the right 'to form associations or unions'. Thus we are given the impression that we would have the right to form associations or unions and thus to carry on organised agitation. For instance, we are given to believe that we could carry on organised agitation for the welfare of Labour, that we can make, in an organised fashion, a demand for the grant of bonus, and if necessary can assemble in public meetings to back up this demand. The truth is that the law restricting the right of holding public meetings would be enforced. Consequently in view of such a law or laws of this kind to be passed in future it may not be possible to hold any public meeting. Thus it is clear that the Government would be in a position to prevent if it so desires, any agitation by Labour for demanding bonus, since all these restrictive laws would be applicable to the workers also. I, therefore, fail to see the significance of the right of forming associations when I find that its substance is taken away by clause (4). I submit that this article is neither for the good of labour nor of the general community.

Further we read of the right to 'move freely throughout the territory of India'. This is sub-clause (d). Under it every citizen of India would have

[Shri H. J. Khandekar]

the right to move freely into any province or any village of India. But the substance of this right is taken away by clause (5). I would make this clear by an illustration. It is a matter of great amazement that in this country there is a law known as the Criminal Tribes Act under which a person is considered a criminal from the moment of his birth. There are also some unfortunate communities in this country whose members would not have the right to move freely in the territory of India granted under this sub-clause to every citizen of India. I believe, Sir, that you are aware that under the Criminal Tribes Act the people following pastoral occupations cannot go to any particular part of India they would like to go. Now they do not have that freedom. We have in our province a tribe known as Mang Garodi. If it has to go from the village of Khape to the village of Janwanver it is followed by the Police who sees to it that it goes only to the latter village and nowhere else. Similarly if it goes from Janwanver to Katol the Police of the former place would go up to Katol to entrust the Police of the latter place to keep watch over it. Thus they have no freedom of movement, whatever freedom of movement is now given under sub-clause (d) is taken away by clause (5) of the same article. If the intention is not to give to the criminal tribes, who are also citizens of India, the freedom which they are entitled to, it is something extremely unjust.

Similarly further on we find the right 'to acquire, hold and dispose of property'. My friend Prof. Yashwant Rai has said with reference to this freedom that there is an unfortunate section—the scheduled castes—in the Punjab who cannot purchase land on account of the provisions of the Land Alienation Act. Moreover the right that you have granted by this sub-clause to every citizen has been taken away by the clause which permits the Land Alienation Act to remain in force even in future. Thus the right which the Harijans should also, like other citizens, get under this Constitution would not be available to the Harijans of the Punjab on account of the Land Alienation Act of the Punjab.

Pandit Thakur Dass Bhargava (East Punjab: General): *[This article would most certainly confer this right.]

Shri H. J. Khandekar : By what article please?

Pandit Thakur Dass Bhargava : It will be conferred by this very article 13.

Shri H. J. Khandekar : I do not find this specified here. If this article is passed as it is, the rights that the Harijans of the Punjab should get will not be available to them.

Mr. Vice-President : May I point out to you that it would be better if you address the Chair and not carry on conversation among yourselves?

Shri H. J. Khandekar : Very well, Sir, Sub-clause (g) grants the right to practise profession or to carry on any business etc. But all these rights are taken away by clause (6) I would like to place before you, Sir, the difficulty we would be placed in by these provisions. The most unfortunate people in this country, in my opinion, are the sweepers. Whatever we may talk about the grant of rights to these unfortunate sweepers the fact remains that these unfortunate people have never been given any rights by any person in India nor have they ever enjoyed any right said to have been granted to them. To talk of their "freedom to practise any profession or trade" is a mockery to them. I do not know of the conditions prevailing in other provinces but I know what happens in my province. If a sweeper working

*[ ] Translation of Hindustani speech.

under a Municipal Committee desires to give up his work, in my province, he would have to give a notice in writing addressed to the District Magistrate of his intention to do so and can leave his service only if that officer agrees to release him. I am of the view that even the very name of sweeper is a matter of contempt by people. I have consequently held the opinion and have repeatedly said to the sweepers, and I would like again to communicate this opinion through you, Sir, to the sweepers of this country, to give up their present occupation which makes them looked down upon as untouchable by the people of the country, because their work is considered to be so dirty and polluting. I advise them to take to such occupations as are followed by other people. If the sweepers of the whole country were to leave, on my advice, their present occupation, and which they could in exercise of the freedom granted by the clause (8), I am sure that they would invite against them the objection of clause (6) which refers to service in the interest of public or as now Dr. Ambedkar seeks to amend service in public interest. The fact is that if all the sweepers of Delhi or Bombay or Calcutta were to stop cleaning latrines, sweeping the streets, they would be said to be acting against public interest; and under this law and under the Essential Services Act they would be compelled to do this work. Then how can you say that all human beings shall have equal rights under this sub-clause? The handicaps from which we suffer, from which the peasant suffers, from which the workers suffer, from which the sweepers suffer would continue to remain even under this article, if it remains as it is. It is, therefore, my submission, and I believe that the House after having heard what I have already said, would consider it proper, that this article should be referred back to the Drafting Committee for being amended. It may then be placed before the House for adoption. This is my proposal. With these words I resume my seat.]

Shri Algu Rai Shastri (United Provinces : General): *[Mr. Vice-President, all the important aspects of fundamental freedom have been dealt with in article 13. From this point of view this article is very important. It is going to be accepted with some minor amendments. Many friends have attacked its provisions on the grounds that the fundamental rights conferred by this article have been taken away by the limitations imposed therein. I feel that along with freedom responsibility is essential. The friends who urge that the rights given in this article have been taken away under the sub-clauses (2), (3), (4), (5) and (6), have not taken into consideration the people who will elect members to the legislatures which have been authorised under these provisions to apply these restrictions, and the people who would compose these legislatures. I submit that those who would sit in the legislatures would be representatives of the people and they will impose only those restrictions which they consider proper. Such restrictions would be in the interest of the people. Only those restrictions will be imposed which would be necessary in the interest of public health, unavoidably necessary for the maintenance of public peace and desirable from the viewpoint of public safety. No restriction will be imposed merely to destroy the liberties of the people.

Freedom is a great art—even greater than the art of music and dancing. One who is adept in music or dancing keeps his voice under control and maintains restraint and control over his bodily movement, and on the movement of his feet. He has to move in accordance with certain recognised rules of music and dancing. He cannot sing and dance out of tune and time, in an unrestrained manner. He remains fully bound to the rules. Full freedom is being conferred upon us but it can never mean that we should not be under any restrictions whatsoever. Freedom of speech does not mean that we can

*[ ] Translation of Hindustani speech.

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give expression to whatever comes to our mind without observing any limitation or rule in this respect. In legislatures we have to follow certain rules and regulations. We are here as the representatives of the sovereign people but even then there are hundreds of restrictions upon us. Freedom by its nature implies limitations and restrictions.

'Kavihin Arth Akhar Bal Sancha, Kartal Tal Gatihin Nat Nacha'

The dancer dances to the measure of clapping. The poet is bound by the significance of words. A dancer dances according to certain fixed timings and never makes a false movement. His movements are in harmony with the tal. When a nation or a community attains freedom, it begins to bear a great responsibility on its shoulders. We cannot therefore say that the restrictions that have been imposed will retard our progress.

One of my friends made a reference to the Bhangi community. I have been working amongst them since 1924. I have thus a personal experience extending over a period of twenty four years. There can be no doubt about the indescribable wretchedness of the Bhangis and of our other so called untouchable brethren. It is indeed very deplorable. But the restrictions provided for in article 13 do not imply that Bhangis will continue to remain bound to their present occupation. Under this article there would be no compulsion for any person to follow any particular occupation. This article as a matter of fact, instead of prescribing the compulsory pursuit of any occupation, provides for unrestricted freedom to every individual to follow any vocation he pleases. I think that the freedoms granted under sub-clauses (f) and (g) need clarification. In sub-clause (f) is specified the right of a person to acquire, hold and dispose of property; while in sub-clause (g) it is stated that there is freedom of a person to practise any profession or to carry on any occupation, trade or business or other means of livelihood of one's choice. It is true that the State has been authorised to restrict this freedom in sub-clauses (5) and (6). But a little reflection would show that it was necessary to limit the freedom so widely provided for in sub-clauses (f) and (g) of clause (1) of article 13. Such unrestricted freedom as is provided in these two sub-clauses could not be free from grave danger. For instance, we have in our society the practice of prostitution. Is this to continue in future also as it has done till now? It should not in any circumstances be permitted to continue. Evidently there must be some provision whereby its practice may disappear by providing for a profession worthy of being adopted. Evidently restrictions have to be imposed on it.

Again, there is freedom in our society to earn one's livelihood by selling intoxicants. In the Directive Principles we have now included a provision for the introduction of Prohibition but in the Fundamental Rights we have given every one the unrestricted rights to earn his livelihood. Both the provisions appear to be contradictory to each other. Thus it is necessary to provide that no one shall be permitted to earn a living by selling intoxicants except for medicinal purposes.

Again begging is a common profession in our society today. Should it be permitted to continue as it is? I submit that there should be a good arrangement for bringing it to an end.

We have now attained freedom. We should do nothing which may endanger it. It is our duty to be good citizens. We have also to see that freedom is not misused. Up till now we were under foreign rule. Indian subjects received step-motherly treatment from the rulers. In England no intoxicant can be mixed with any medicine other than in the prescribed proportion but here bottles of country wine are being sold openly in the market. Our 'Freedom'—our own mother—can never permit us—her children—to have this because she cannot permit her children to go astray.

Good citizenship implies restrictions:

"Satyam Bruyat Priyam Bruyat Na Bruyat Satyamapriyam"

Be truthful and sweet in speech, but do not speak out the unpleasant truth. Anyone has the freedom to state the truth, but not the freedom to speak out the unpleasant truth. This is a restriction and good citizens have to accept this restriction. I beg, therefore, to express my appreciation of article 13 read with the amendment moved by Dr. Ambedkar and which already been referred to.

I would like to make another observation. I feel that the rights guaranteed in sub-clauses (f) and (g) are rather too wide. I have already said something about freedom of making a living.

I shall resume my seat after saying a few words about the right to acquire property. The type of freedom being guaranteed implies that the capitalists and feudal aristocrats would have full rights to acquire and dispose of property. But the mode in which property is being acquired and held is such as permits the property owners to have all the benefits while workers who create this property have all the toil as their share. 'The ox produces and the horse consumes'—this saying is being fulfilled. Of course, this should not be so. I submit that this right of property should be so interpreted in future as to permit the transformation of individualistic capitalism into State capitalism. All the means of production and the distribution of the commodity should be owned and controlled by the State and not by the individual. "Unless the individual ownership yields place to collective ownership—social ownership—there cannot be real Swaraj."

To reach this goal it is necessary that these restrictive provisions should be interpreted in this way. With these words I express my support for this article.]

Shri Amiyo Kumar Ghosh (Bihar : General): Mr. Vice-President, Sir, we are dealing today with one of the most important clauses of this Constitution. We are dealing with the freedom of citizens. That is to say what rights the Indian people have under this Constitution. On reading the entire clause, I feel that the rights which have been recognised under sub-clause (1) of this article have been to a great extent abrogated by the subsequent provisos. In a Constitution, there are two important points, namely what are our rights and what form of Government we are going to have. These are the two important subjects in a Constitution and others flow from them and therefore one expects that so far as the rights of the people are concerned, they should be expressed in clear, simple and straight language, so that a common man when he reads the Constitution can understand exactly and precisely what are his rights and what are the checks to his rights. I do not propose to say that at times of emergencies or grave needs, freedom does not require to be checked to a certain extent. I believe in checks and balances, but at the same time, I must say that those checks should be very precise, and clear and should not be couched in ambiguous language and left to courts for decisions.

Now you will find, Sir, that in all these sub-clauses (2), (3), (4), (5) and (6) we have used the words "interest of general public", 'general public interest',

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'public order' and 'property' without defining them and I think it will take centuries for the Supreme Court to exactly say what really these words mean. By incorporating such words in the sub-clauses, wide powers have been given to the Central and the Provincial Legislatures to frame laws by which they can restrict the freedom which has been given to the people under sub-clause (1) of this article. I do not like to enter into any criticism of this article, but the only thing I want to say is that the entire clause is very disappointing.

Specially, I will draw the attention of the Honourable Dr. B. R. Ambedkar to sub-clause (5). Now, Sir, in this sub-clause (5) the rights which have been recognised in sub-clauses (1) (d), (e) and (f) above have been practically negatived and have given rise to grave anxiety in the minds of many regarding the exact position in matters of residence, acquisition and disposition of properties. The exact significance of clause (5) in respect of (e) and (f) requires further clarification. Next I cannot understand why in this clause, the words, "for the protection of the interests of any aboriginal tribe" have been incorporated. What it exactly means I fail to understand. Does it mean the 'tribal area' or does it mean that wherever any aboriginal tribe lives, irrespective of their numbers the legislatures can frame laws safeguarding their interest as, for instance, if there be 15 aboriginals living in Delhi, can the Central Legislature frame a law by which they can restrict the rights of other people in the interests of these fifteen or sixteen aboriginals? I could understand that if that had been in respect of the tribal area, but one cannot understand that wherever there may be some aboriginals the legislature can make a law, by which they can restrict the rights of all others for the protection of those few.

Sir, I feel the position is ambiguous and clumsy and should be made clear. I fail to understand why clause (d) has been tacked with sub-clause (5). Free movement has been restricted by that sub-clause. My own personal view is that there should not have been any restriction regarding movement. The citizens should have been given a free right to move. Only on administrative or political grounds the Central or provincial legislatures could be empowered to frame laws judiciously by which they can restrict the movement of the people and this power should be worked sparingly and in very emergent circumstances. In every matter of freedom, restrictions have been imposed in the interest of general public. What this interest is, we do not know and has not been stated anywhere. Such words can be interpreted differently in different States and the Centre and may give rise to separate and conflicting laws. Sir, this would create great confusion. Therefore, I submit, if this article is read and viewed, it only gives rise to disappointment, and with a little more effort and with as light inclination this article could have been framed in such a language that it would have been a model article in the whole of the Constitution.

Mr. Vice-President : Mr. T. T. Krishnamachari.

Shri Mahavir Tyagi: May I know, Sir, is it by reference to the slips that you are calling the speakers?

Mr. Vice-President : I am not prepared to give you information as to how I conduct my work.

Shri Gopal Narain (United Provinces : General): So that we need not stand every time. Have we to stand every time or send slips, Sir?

Mr. Vice-President : The remedy lies in your hands; you can do both, you can send a slip and stand, or you can do neither.

Shri T. T. Krishnamachari (Madras : General): Sir, as the Speaker that spoke before me said, this is perhaps the most important article in this Part

and one which enumerates the rights for the attainment of which we in India have undergone all the troubles to obtain our freedom. Actually, Sir, it is in the manner in which the State is going to allow the people to use the rights enumerated in this particular article that the people can feel that all that they have done in the past and the sacrifices that they have made in the past to obtain freedom was worth while.

Sir, I do not say that this article is perfectly worded; nor can I maintain that the exceptions to parts of this article provided by clauses (2), (3), (4), (5) and (6) do not curtail the liberty and the right conceded to individual citizens in clause (1). But, as a student of politics, I have to realise that there can be no absolute right and every right has got to be abridged in some manner or other under certain circumstances, as it is possible that no right could be used absolutely and to the fullest extent that the words conveying that right indicate. It is merely a matter of compromise between two extreme views. Having got our freedom only recently, it is possible that we want all the rights that are possible for the individual to exercise, unfettered. That is one point of view. The other view is that having got our freedom, the State that has been brought into existence is an infant State which has to pass through various kinds of travail, and what we could do to ensure that the State continues to function un-impaired should be assured even if it entails an abridgment of the rights conferred by this article. I have no doubt in my mind that, though I have had to say something perhaps harsh on certain occasions in regard to what the Drafting Committee has done generally, in this article, the Drafting Committee has chosen the golden mean of providing a proper enumeration of those rights that are considered essential for the individual, and at the same time, putting such checks on them as will ensure that the State and the Constitution which we are trying to bring into being today will continue unhampered and flourish.

Sir, language is always rather a difficult affair. What language conveys to me it may not convey to another person, and as my honourable Friend Dr. Ambedkar put it, we are legislating in a language which is foreign to us, the exact import of which we do not understand. Should we do it in one of our own languages? The difficulty would be all the greater for the reason that the language of one set of people is not the language of another set of people. Besides, precise thinking in our own language so that we could adopt it for constitutional purposes has not yet developed. Actually we have to depend for the interpretation of the particular restrictions that are enumerated herein on the Supreme Court or some other authority that would come into being in the future, to ensure that the peoples' rights are not abridged.

Speaking today in the context of the situation in which we are placed, we cannot but envisage that those rights will be abridged in order to maintain the stability of the State. This State that has now been brought into being has been put to a lot of travail in the first eighteen months of its existence and every Member of this House knows it. Special powers are needed by the Government to meet not merely with the refugee problem, not merely with the fact that there are various forces in this country which do not like this State to grow in the present form, but also with the various economic troubles that now face this country. Are we to build up our Constitution, putting in these restrictions which are necessary today in the light of things that stand as they stand today, or are we to visualise a time when things will be normal and when it will not be necessary for the State to use these powers, is the problem. Again, I think, the Drafting Committee and my honourable Friend Dr. Ambedkar have chosen the golden mean in this particular matter.

There is one other matter on which I would like to lay stress before I sit down. We in this House, though the bulk of us belong to one party, have got

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different ideas on economic matters. We were all together in one particular fact that the British should go; we are all united in the desire that we should have a stable constitution which will ensure to the common man what he needs most, what he did not obtain in the former regime. But, in the achievement of that goal in the methodology to be adopted for the achievement of that goal our ideas vary considerably, and vary from one end to the other. I am happy to see that the Drafting Committee has chosen to avoid importing into this particular article the economic implications in the enumeration of fundamental rights that obtain in other constitutions. I think it has been a very wise thing. I know a friend of mine in this House has objected to one particular sub-clause (f) of article 13, namely, to acquire, hold and dispose of property. I would like to assure him and those who hold the opinion that he holds that this does not really mean that there is any particular right in regard to private property as such, no more than what any person even in absolutely socialistic regime will desire, that what he possesses, what are absolutely necessary for his life, the house in which he lives, the movables that he has to possess, the things which he has to buy, should be secured to him, which I think any socialistic regime, unless it be communistic, will concede, is a right that is due to an individual.

Actually the economic significance that attaches to any enumeration of Fundamental Rights, such as the rights conceded in the Bill of hights in the American Constitution and the addition to these in the Fourteenth Amendment, finds no place so far as this particular Constitution is concerned, and I am able to say that that is one of the bull features of this Draft Constitution. We have chosen to avoid as far as possible, in spite of the fact that the vested interests are still with us and they have a certain amount of influence—we have chosen to avoid as far as possible laying that stress on the importance of the economic surroundings which is a significant feature of the American Constitution, and I do hope that my honourable Friend, who objected to a particular sub-clause in this article namely clause (f), will now realise that it has no meaning so far as property rights are concerned except in something that is dear to an individual and which is very necessary to concede in an enumeration of rights of this nature.

Sir, the future, what it is going to be none of us really know, but we almost of us—envisage that the future will be one which will be bright, the future will be one where the State is going to be progressive, where the State is going to interfere more and more in the economic life of the people not for the purpose of abridgement of rights of individuals, but for the purpose of bettering the lot of individuals. That is the State that I envisage, a State which will not be inactive, but will be active and interfere for the purpose of bettering the lot of the individual in this country; and I do feel, Sir, that as it is a well known canon that in any Constitution that is forged there should be a reconciliation of past political thought which will at once pave the way for a new level of thinking, a new level of progressive and critical thinking. I think those conditions are at any rate possible in an enumeration of the rights such as is found in article 13. Sir, there is no use our comparing this particular article which happens to be the crux of the Fundamental Rights with either what obtains in the commentaries of the English Constitution or what obtains in the text of the American Constitution or any other Constitution, for the reason that the setting is totally different. There is no use anybody saying that a particular feature is not found in the English Constitution. English jurisprudence is something totally different for the reason that English Parliament does not provide for the enumeration of all these rights which is absolutely based on custom on which you cannot depend for ever because Parliament there is supreme and can make laws contravening every

recognised custom. They do not have to have a Constitutional amendment for that purpose. Parliament can fomulate new laws which might cut right across the conventions, and the usages of the Constitution established over centuries. But so far as the American example is concerned—and certainly there are other examples which are modelled on the American example—there is one distinction between our own way of thinking and what the Founding Fathers in America thought and what was sustained in America until recently, *viz.,* the economic basis of the American Constitution is something totally different from what we envisage to be the economic basis of our Constitution. So any analogy is only applicable up to a point, and therefore any of our friends who seek to import particular provisions of the American Constitution or particular words either in this particular article or in later articles, have to recognize that the bulk of the opinion of this House is something totally different from the economic bias that more or less determined the American Constitution, right at the inception and later on as well, on which bias legal literature has built up several conventions attached to that Constitution.

Sir, I would like to say this that the amendments proposed by my honourable Friend Dr. Ambedkar particularly to clauses (4), (5) and (6) are a great improvement on the original draft and my own view is that they do take away the lacunae that existed in the original draft. But I should like to lay emphasis on one particular amendment moved by my Friend Mr. Munshi who is not here. The value of that amendment happens to be only, to a very large extent, sentimental. The word 'sedition' does not appear therein. Sir, in this country we resent even the mention of the word 'sedition' because all through the long period of our political agitation that word 'sedition' has been used against our leaders, and in the abhorrence of that word we are not by any means unique. Students of Constitutional law would recollect that there was a provision in the American Statute Book towards the end of the 18th Century providing for a particules law to deal with sedition which was intended only for a period of years and became more or less defunct in 1802. That kind of abhorrence to this word seems to have been more or less universal even from people who did not have to suffer as much from the import and content of that word as we did. But all the same the amendment of my honourable Friend Mr. Munshi ensures a very necessary thing so far as this State is concerned. It is quite possible that ten years hence the necessity for providing in the fundamental Rights an exclusion of absolute power in the matter of freedom of speech and probably freedom to assemble, will not be necessary. But in the present state of our country I think it is very necessary that there should be some express prohibition of application of these rights to their logical end. The State here as it means in the amendment moved by my honourable Friend Mr. Munshi as I understand it, means the Constitution and I think it is very necessary that when we are enacting a Constitution which in our opinion is a compromise between two possible extreme views and is one suited to the genius of our people, we must take all precautions possible for the maintenance and sustenance of that Constitution and therefore I think the amendment moved by my honourable Friend Mr. Munshi is a happy mean and one that is capable of such interpretation in times of necessity, should such time unfortunately come into being so as to provide the State adequate protection against the forces of disorder.

Sir, one other matter which I would like to mention before I sit down is this. Sub-clause (c) of art. 13 (1) is very important. I do not know if people really realise as they would know in other countries and particularly in U.S., labour has had to undergo an enormous amount of trouble to obtain elementary rights on matters of the recognition of their rights, in the matter of the

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right to assemble together as a Union. I do not think that in my view clause (4) of this particular article unnecessarily abridges the rights conferred by sub-clause (c) of clause (1). My own feeling is that we have more or less sought to cut across the difficulties which the other countries have faced in this particular matter and we have ensured for labour the very legitimate right to come together, to agitate and to obtain for themselves and for the members of their Union the rights that are justly theirs. That I think is more or less a charter for workers in this country and I am happy to see that the vested interests have not tried in any way to abridge this particular right. On the whole, Sir, this particular article with the amendments proposed by my honourable Friend Mr. Munshi and the three amendments proposed for clauses (4),(5) and (6) by Dr. Ambedkar and also the addition of the word 'reasonable' which has been brought in by my honourable Friend Mr. Thakur Dass Bhargava, represents in my opinion a fairly reasonable enumeration of our rights and a fairly conservative abridgment of those rights. The working of these particular rights depends upon the genius of our people, upon how we develop ideas of liberty which are still today in a very undeveloped state. It is no doubt true that our leaders are sometimes hasty, they want more powers, when they are faced with difficult situations and they think the only way in which they could deal with them is to have more powers. They do not recognize that they are leaders of the people the chosen leaders of this country each one with a personality of his own and the aggregate effect of their personality and their influence can cut right across the necessity for any drastic powers. That kind of confidence will come only later on—at the moment they merely want to follow in the footsteps of people who preceded us in the government of this country, who had no touch or contact with the people, who could never get on to a platform and persuade the people to do any particular thing, who only wanted powers which could be exercised through the medium of the bureaucracy. That mentality will change, and will surely change, because our leaders are very eminent people. Surely, the House will realise that the Prime Minister and the Deputy Prime Minister, if they get upon a platform can sway millions of people if they could only get their voices to reach them. It only depends upon the type of leaders that we get for the abridgment of these rights which are enumerated here to become a dead letter, and that is in the lap of the gods. For the time being we have done the very best possible which human ingenuity can devise.

Sir, I support the article before us.

Shri Lakshmi Narayan Sahu (Orissa : General) : *[Mr. Vice-President, I would like to make an observation with regard to article 13 which is now under discussion. The article confers certain rights on the citizens, but the words 'subject to the other provisions of this article' occurring in the very beginning of the article, serve as a warning to us that the article confers freedom, no doubt, but that it is only within a limited sphere. Moreover the sub-clauses (2), (3), (4), (5) and (6) that follow, re-emphasise that unless the freedom granted is enjoyed within the prescribed limits, people would get into great difficulty. I feel, however, that both the words 'subject to other provisions of this article' and the sub-clauses (2), (3), (4), (5) and (6) should be deleted from the article. We shall be able to visualize the true picture of our freedom only when this has been done. So long as the sub-clauses remain, we can not have a correct picture of our freedom. Moreover I feel that liberty has been considerably narrowed during the drafting process. It is just like the narrowing of the size of a temple as a consequence of its main entrance being made too large during the process of constructing the temple. It is of no

*[ ] Translation of Hindustani speech.

use whatever. There is an Oriya proverb which is meant for such a situation. It is—

Ghare na pasuna chal vaguchi Devalku Mukhashala Bil Gala.

It means that it is no use making a house with so small an entrance that one's entry into the house is rendered difficult without striking his head against the door-frame. Though there has been considerable discussion on the article, we wish that we discuss it more thoroughly and that the Drafting Committee gives more consideration to it. Thus, whatever drawback we find in the article should be removed. In my opinion sub-clauses (2), (3), (4), (5) and (6), must be deleted. Unless this is done we shall not have the taste of freedom and shall continue to remain in a condition of fear. Those who till recently were seeking to organise disobedience of laws are, being today, in the seat of power, apprehensive of the violation of laws by other people, and under this apprehension, are seeking to make the law so comprehensive and rigid as to prevent any one outside the ruling group from going beyond its control. I would like to say that article 13 which is now under discussion betrays an ununderstandable apprehension on the part of authority. The fact is that there are many provisions in this Draft Constitution which would prevent the citizens from committing any disorder. Thus article 25 provides that "The right to move Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed". I submit, therefore, that all the restrictive provisions contained in article 13 should be deleted. My belief is that article 25 will be as helpful to the government as to good citizens. Unless the restrictive provisions of this article are deleted, we cannot properly enjoy our National Freedom. Moreover it had always been our loud assertion that self-government is better than good government. Now we have grown indifferent to self-government and are raising the slogan of good government. With so many rigid provisions what good government can you have and for whom?

Those who are in power at present are apprehensive that the people and political parties other than those of the ruling group would practise disobedience of laws. That is why so many restrictive provisos have been included in the Draft Constitution. It is precisely why I insist that the Fundamental Rights should be treated as fundamental and inviolable. It is not proper therefore to delimit them by so many restrictive clauses and sub-clauses.

There is one observation I would like to make about the Adibasis. I agree to a certain extent with what Shri Jaipal Singh has said. Adibasis move about with arms. This article lays down that all citizens shall have the right "to assemble peaceably and without arms". We should therefore consider whether or not this clause takes away from the Adibasis their customary right to bear arms. In view of the provisions contained elsewhere in the constitution. I think, this will not affect the right of Adibasis to bear arms. If this view be correct Adibasis need not fear the loss of their right. Though I have no objection to the words "assemble peaceably and without arms" being put in here, yet I feel that nowhere in the Draft Constitution can be found any provision regarding the repeal of the Arms Act and the grant of the right to the people to bear arms—a right which is essential to make our people fearless. Therefore, I would like that a provision for the repeal of the Arms Act and making it permissible to the people to bear arms be included in the Draft. I would not like to say anything more about this matter.

We often talk of minorities today but we should stop this kind of talk now. What is a minority? When we are going to make one and the same provision for all, I fail to see who remains to constitute the minority. It may be said against this view that the Depressed Classes are a minority, the

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aboriginals are in a minority and the Muslims are in a minority. But once it is conceded that a particular group is a minority there is the danger that many other groups would begin to clamour for being considered as minorities. Formerly in the political sphere the Muslims were considered a minority. But then the Depressed Classes got themselves included in this category. I am afraid that among the Depressed Classes themselves new groups would begin demanding the status of a new minority. The same is, in my opinion, the case of the aboriginals. I would, therefore, like that the word 'minority' wherever it occurs in the Draft Constitution should be deleted and the article 13 should be so drafted that all may feel that they have got real Swaraj and that they have no cause for apprehension and that they have as unrestricted a freedom as any one else.

Shri Deshbandhu Gupta (Delhi) : *[Mr. Vice-President, I have had an opportunity once before of representing my views on the recommendations of the Drafting Committee. I was not at that time in a position to congratulate my Friend, Dr. Ambedkar and the Drafting Committee, on certain of there commendations, which related to the Chief Commissioners' Provinces. But today. I feel that on article 13, which relates to our Fundamental Rights, and particularly after this amendment as it stands, the Drafting Committee deserves our hearty congratulations.

Some of my friends here have objected saying that what has been given by one hand has been taken away by the other. But if you ponder a little, you will find that it is not so. If some one is given a freedom by which the freedom of the other is curtailed, then I would say, that such a demand is not for the right type of freedom. For example, it has been stated that restrictions have been imposed on the movement of people belonging to the criminal tribes. I would like to ask, why should not restrictions be imposed on the movement of the criminal-tribe people, when they are a source of danger to other law-abiding citizens? Could anyone be serious in saying that restrictions and conditions imposed on the criminal tribes should not have been imposed at all? Or that the presence of those restrictions and conditions has in any way curtailed our freedom? Similarly in respect of land, it has been stated that henceforth our Harijan brethren would not be able to purchase any land for themselves and the Land Alienation Act would continue to stand as it is. It is perfectly correct to say that the most objectionable feature of the Land Alienation Act was that certain castes had been mentioned therein. For example, a Bania or a Brahmin or a Harijan could not purchase land. It was wrong. But in fact, that restriction is being swept aside today by the conferment of the Fundamental Right that all citizens shall have the right to acquire property. From now on, if any restriction is imposed, it would have to be proved whether it is proper or improper. That question would be decided, under the provisions of this section, by the Supreme Court. It is a big gain. Formerly, the phraseology of the article was defective, but that defect has been removed by the acceptance of the amendment of my Friend, Pandit Thakur Dass Bhargava, which seeks to add the word 'reasonable'. Now, there is nothing to warrant the imposition of any undue restriction. If there would be any, then against that an appeal could be preferred, and that would be decided by our Supreme Court which would be composed of great experts in India. That is why I feel that we should welcome this article and that it would be wrong to give an impression that it curtails our freedom in any sense. We should realise that our country is now a free country. I agree with my Friend, Shri Algu Rai Shastri that, along with rights, certain obligations and responsibilities have also come upon

*[ ] Translation of Hindustani speech.

us. If we do not stand by those obligations then our freedom would be the freedom of the jungle. That freedom, I think, would not be such as to merit a welcome from us. Therefore, I think, this article as amended, should be accepted by us. We should realise that it forms the basis of our constitution, and it is a thing of which we can rightly feel proud and which will raise us in the estimation of the whole world.]

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I consider article 13 as the most important article, as it deals with some of the fundamental rights which are common to all free countries and all free citizens in the world. A number of amendments have been moved to this article which can all be classified under three heads. Some want to remove all restrictions on the rights that have been set out in clause (1). The fundamental rights guaranteed in clause (1) of article 13 are freedom of speech and expression, assembly and association, right to move freely inside the territory, right to practise any profession, right to reside—these are the fundamental rights that have been guaranteed. There are exceptions to these fundamental rights that have been set out in this clause and they are to be found in the subsequent clauses (2), (3), (4), (5) and (6). Some of the amendments are for the deletion of the clauses; and some to make improvements so that these provisos may not take away the rights that have been guaranteed under clause (1).

Pandit Thakur Dass Bhargava has moved an amendment saying that if any restrictions have to be imposed upon these rights that have been guaranteed in clause (1), they must all be reasonable. I believe that that amendment would sufficiently meet the situation.

Regarding freedom of speech we have improved upon the restriction that has been imposed in clause (2). The word 'sedition' has been removed. If we find that the government for the time being has a knack of entrenching itself, however bad its administration might be, it must be the fundamental right of every citizen in the country to overthrow that government without violence, by persuading the people, by exposing its faults in the administration, its method of working and so on. The word 'sedition' has become obnoxious in the previous regime. We had therefore approved of the amendment that the word 'sedition' ought to be removed, except in cases where the entire state itself is sought to be overthrown or undermined by force or otherwise, leading to public disorder; but any attack on the government itself ought not to be made an offence under the law. We have gained that freedom and we have ensured that no government could possibly entrench itself, unless the speeches lead to an overthrow of the State altogether.

Then there are certain amendments which have been given for adding to the fundamental rights that have been set out. They require some detailed consideration. The foremost of those amendments relates to guaranteeing that every citizen shall have the right to exercise his personal law. Let us see what this means. We have already discussed personal law at some length in the Directive clause where a direction has been given that a uniform code of civil law must be evolved early or late. Amendments have been moved that unless a provision is made in the Fundamental Rights there is no safety and that the majority community may introduce its own personal law or flagrantly violate the personal law of any community. Let us take the communities. There are three main religions. Let us take Muhammadanism. There is absolutely no provision in the Fundamental Rights that you ought to riderough-shod over their personal law. The law of the land as it exists today gives sufficient guarantee so far as that is concerned. But our friends who moved the amendments wanted a double guarantee that their personal law ought not to be interfered with. My submission is that it is impracticable, for, in an advanced society, even the members who belong

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to a particular community may desire their personal law to be changed. Let us take the Muhammadan law. I would only refer to two or three amendments that have been made to that law as set out in the Shariat. As recently as in 1939 the Central Legislature passed a law for enabling the dissolution of Muslim marriages under certain circumstances. You will be pleased to note that under the Muslim Law, a man has got the unilateral right to declare a marriage void by pronouncing the word *talak* and there is another form of divorce called kulamp. Woman normally has no right to dissolve a marriage. She has to go to a court of law and various matters have to be set out such as impotency and so on. All that has been made easy now. Another consideration is that a woman who cannot lead a family life with the husband in the same household is entitled under certain conditions to separation. These have hitherto not been envisaged nor provided for in the Dissolution of Muslim Marriages Act. As a member of the Assembly I was a member of one of the committees that considered this question. We left the question entirely for the Muslim Members concerned to settle. The Shariat Law was introduced in the Assembly and an Act was passed bringing into line with the Shariat Law the different pieces of legislation in the provinces of India. This was done four years ago. The Wakf Validation Act was passed in 1930. A time may come when members belonging to the particular community may feel that in the interests of the community progressive legislation has to be enacted. But if we make a provision here that the personal law shall not be interfered with, there will not be any right to the members of that community itself to modify that law. Therefore it is not necessary that we should introduce it as a fundamental right. There is absolutely nothing in this Constitution which allows the majority to override the minority. This is only an enabling provision. Without the consent of the minority that is affected, no such law will be framed. I therefore feel it is unnecessary to include it in the Fundamental Rights.

Then my friend, Mr. Kamath wanted that we should have the right to bear arms and that this right should be put in the Fundamental Rights. It is true that for a long time the Congress has been from year to year passing resolutions that we must have the right to bear arms. The situation has changed now. We were then slaves and wanted to equip ourselves sufficiently so that in case of need we can use the arms for getting out of the foreign yoke. But, today in the civilised world I should like to ask my honourable Friend if he feels that everybody should be allowed to fight even to defend himself. Except in extreme circumstances no force should be used. Even when force has to be used, it must be concentrated in the State. The State it is that must stand between man and man and citizen and citizen when they want to fight. No individual citizen ought to be allowed to attack another. Very often the right to bear arms is abused.

Shri H. V. Kamath: Not even in self-defence?

Shri M. Ananthasayanam Ayyangar: Very often defence is offence in the hands of strong young men whose blood is very warm like that of my friend. Mr. Kamath's defence very often means offence.

Shri H. V. Kamath: I strongly protest against that remark, Sir.

Shri M. Ananthasayanam Ayyangar: I am sorry, Sir.

Mr. Vice-President : He has expressed his regret.

Shri M. Ananthasayanam Ayyangar: I have the greatest regard for my young friend and his youthful enthusiasm.

So far as the communal point is concerned, there is an amendment here which requires it to be included as a fundamental right. I am afraid it is

not possible to do so. There is provision made in the Penal Code under sections 153 and 155-A for the purpose. That is ample.

As regards freedom of thought, I am surprised to see an amendment moved saying that freedom of thought ought to be allowed. Nobody can prevent freedom of thought. It is a fundamental right. It is only freedom of expression that has to be allowed. Now, freedom of press means freedom of expression. As regards the secrecy of telegraphic and telephonic communications, it is a debatable point and we ought not to allow any change in the existing provision.

Now, therefore, except the amendments which are acceptable to Dr. Ambedkar, the others should not be accepted. They are objectionable and ought not to find a place in the Constitution.

Shri Satyanarayan Sinha (Bihar : General) : I move that the question be now put.

Mr. Vice-President : An enquiry was made of me as to how I have tried to conduct the proceedings of this House. I refused to supply the information at that time, because I thought it might be left to my discretion to explain how I conduct the proceedings. I see that I have not been able to satisfy all the members who desire to speak. At the present moment I have here 25 notes from 25 different gentlemen all anxious to speak. There is no doubt that each one of them will be able to contribute something to the discussion. But the discussion cannot be prolonged indefinitely. This does not take into account those other gentlemen equally competent to give their opinion who stand up and who have denied to themselves the opportunity of sending me notes. I have tried to get the views of the House as a whole. If Honourable Members will kindly go through the list of speakers who have already addressed the House they will find that every province has been represented and every so-called minority from every province has been represented. In my view, in spite of what Pandit L. K. Maitra says, Bengalees are a majority. In my view therefore the question has been fully discussed. But, as always, I would like to know whether it is the wish of the House that we should close this discussion.

Honourable Members: Yes, yes.

Mr. Vice-President : Then I call upon Dr. Ambedkar to reply.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, among the many amendments that have been moved to this article 13, I propose to accept amendment No. 415, No. 453 as amended by amendment No. 86 of Mr. Munshi, and amendment No. 49 in list I as modified by Mr. Thakur Dass Bhargava's amendment to add the word 'reasonable'.

Mr. Vice-President : Will you kindly tell us how you propose to accept amendment No. 415 ?

The Honourable Dr. B. R. Ambedkar : The amendment which seeks to remove the words 'subject to the other provisions of this article'.

Mr. Vice-President : And then?

The Honourable Dr. B. R. Ambedkar : Then I accept No. 453 as modified by amendment No. 86, and amendment No. 49 in List I as modified by the amendment of Pandit Thakur Dass Bhargava which introduces the word 'reasonable'.

Now, Sir, coming to the other amendments and the point raised by the speakers in their speeches in moving those amendments, I find that there are just a few points which call for a reply.

With regard to the general attack on article 13 which has centred on the sub-clauses to clause (1), I think I may say that the House now will be in a

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position to feel that the article with the amendments introduced therein has emerged in a form which is generally satisfactory. My explanation as to the importance of article 8. my amendment to the phrase "existing laws" and the introduction of the word "reasonable" remove, in my judgment, the faults which were pointed out by honourable members when they spoke on this article, and I think the speeches made by my friends, Professor Shibban Lal Saksena and Mr. T. T. Krishnamachari and Mr. Algu Rai Shastri, will convince the House that the article as it now stands with the amendments should find no difficulty in being accepted and therefore I do not want to add anything to what my friends have said in support of this article. In fact I find considerable difficulty to improve upon the arguments used in their speeches in support of this article.

I will therefore take up the other points. Most of them have also been dealt with by my friend, Mr. Ananthasayanam Ayyangar and if, Sir, you had not called upon me, I would have said that his speech may be taken as my speech, because he has dealt with all the points which I have noted down.

Now, the only point which I had noted down to which I had thought of making some reference in the course of my reply was the point made by my friend, Professor K. T. Shah, that the fundamental rights do not speak of the freedom of the press. The reply given by my friend, Mr. Ananthasayanam Ayyangar, in my judgment is a complete reply. The press is merely another way of stating an individual or a citizen. The press has no special rights which are not to be given or which are not to be exercised by the citizen in his individual capacity. The editor of a press or the manager are all citizens and therefore when they choose to write in newspapers, they are merely exercising their right of expression, and in my judgment therefore no special mention is necessary of the freedom of the press at all.

Now, with regard to the question of bearing arms about which my friend Mr. Kamath was so terribly excited, I think the position that we have taken is very clear. It is quite true and everyone knows that the Congress Party had been agitating that there should be right to bear arms. Nobody can deny that. That is history. At the same time I think the House should not forget the fact that the circumstances when such resolutions were passed by the Congress no longer exist.

Shri H. V. Kamath : A very handy argument.

The Honourable Dr. B. R. Ambedkar : It is because the British Government had refused to allow Indians to bear arms, not on the ground of peace and order, but on the ground that a subject people should not have the right to bear arms against an alien government so that they could organise themselves to overthrow the Government, and consequently the basic considerations on which these resolutions were passed in my judgment have vanished. Under the present circumstances, I personally myself cannot conceive how it would be possible for the State to carry on its administration if every individual had the right to go into the market and purchase all sorts of instruments of attack without any let or hindrance from the State.

Shri H. V. Kamath : On a point of clarification, Sir, the proviso is there restricting that right.

The Honourable Dr. B. R. Ambedkar : The proviso does what? What does the proviso say? What the proviso can do is to regulate, and the term 'regulation' has been judicially interpreted as prescribing the conditions, but the conditions can never be such as to completely abrogate the right of the citizen to bear arms. Therefore regulation by itself will not prevent a citizen who wants to have the right to bear arms from having them. I question very much

the policy of giving all citizens indiscriminately any such fundamental right. For instance, if Mr. Kamath's proposition was accepted, that every citizen should have the fundamental right to bear arms, it would be open for thousands and thousands of citizens who are today described as criminal tribes to bear arms. It would be open to all sorts of people who are habitual criminals to claim the right to possess arms. You cannot say that under the proviso a man shall not be entitled to bear arms because he belongs to a particular class.

Shri H. V. Kamath : If Dr. Ambedkar understands the proviso fully and clearly, he will see that such will not be the effect of my amendment.

The Honourable Dr. B. R. Ambedkar : I cannot yield now. I have not got much time left. I am explaining the position that has been taken by the Drafting Committee. The point is that it is not possible to allow this indiscriminate right. On the other hand my submission is that so far as bearing of arms is concerned, what we ought to insist upon is not the right of an individual to bear arms but his duty to bear arms. (An Honourable Member: Hear, hear.) In fact, what we ought to secure is that when an emergency arises, when there is a war, when there is insurrection, when the stability and security of the State is endangered, the State shall be entitled to call upon every citizen to bear arms in defence of the State. That is the proposition that we ought to initiate and that position we have completely safeguarded by the proviso to article 17.

Shri H. V. Kamath : (rose to interrupt).

Mr. Vice-President : You do not interrupt, Mr. Kamath. You cannot say that I have not given you sufficient latitude.

The Honourable Dr. B. R. Ambedkar : Coming to the question of saving personal law, I think this matter was very completely and very sufficiently discussed and debated at the time when we discussed one of the Directive Principles of this Constitution which enjoins the State to seek or to strive to bring about a uniform civil code and I do not think it is necessary to make any further reference to it, but I should like to say this that, if such a saving clause was introduced into the Constitution, it would disable the legislatures in India from enacting any social measure whatsoever. The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion. In Europe there is Christianity, but Chistianity does not mean that the Christians all over the world or in any part of Europe where they live, shall have a uniform system of law of inheritance. No such thing exists. I personally do not understand why religion should be given this vast, expansive jurisdiction so as to cover the whole of life and to prevent the legislature from encroaching upon that field. After all, what are we having this liberty for? We are having this liberty in order to reform our social system, which is so full of inequities, so full of inequalities, discriminations and other things, which conflict with our fundamental rights. It is, therefore, quite impossible for anybody to conceive that the personal law shall be excluded from the jurisdiction of the State. Having said that I should also like to point out that all that the State is claiming in this matter is a power to legislate. There is no obligation upon the State to do away with personal laws. It is only giving a power. Therefore, no one need be apprehensive

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of the fact that if the State has the power, the State will immediately proceed to execute or enforce that power in a manner that may be found to be objectionable by the Muslims or by the Christians or by any other community in India.

We must all remember—including Members of the Muslim community who have spoken on this subject, though one can appreciate their feelings very well—that sovereignty is always limited, no matter even if you assert that it is unlimited, because sovereignty in the exercise of that power must reconcile itself to the sentiments of different communities. No Government can exercise its power in such a manner as to provoke the Muslim community to rise in rebellion. I think it would be a mad Government if it did so. But that is a matter which relates to the exercise of the power and not to the power itself.

Now, Sir, my friend, Mr. Jaipal Singh asked me certain questions about the Adibasis. I thought that that was a question which could have been very properly raised when we were discussing the Fifth and the Sixth Schedules, but as he has raised them and as he has asked me particularly to give him some explanation of the difficulties that he had found, I am dealing with the matter at this stage. The House will realize what is the position we have laid down in the Draft Constitution with regard to the Adibasis. We have two categories of areas,—scheduled areas and tribal areas. The tribal areas are areas which relate only to the province of Assam, while the scheduled areas are areas which are scattered in provinces other than Assam. They are really a different name for what we used in the Government of India Act as 'partially excluded areas'. There is nothing beyond that. Now the scheduled tribes live in both, that is, in the scheduled areas as well as in the tribal areas and the difference between the position of the scheduled tribes in scheduled areas and scheduled tribes in tribal areas is this: In the case of the scheduled tribes in the scheduled areas, they are governed by the provisions contained in paragraph V of the Fifth Schedule. According to that Schedule, the ordinary law passed by Parliament or by the local Legislature applies automatically unless the Governor declares that that law or part of that law shall not apply. In the case of the scheduled tribes in tribal areas, the position is a little different. There the law made by Parliament or the law made by the local legislature of Assam shall not apply unless the Governor extends that law to the tribal area. In the one case it applies unless excluded and in the other case, it does not apply unless extended. That is the position.

Now, coming to the question of the scheduled tribes and as to why I substituted the word "scheduled" for the word "aboriginal", the explanation is this. As I said, the word "scheduled tribe" has a fixed meaning, because it enumerates the tribes, as you will see in the two Schedules. Well, the word "Adibasi" is really a general term which has no specific *legal de jure* connotation, something like the Untouchables. It is a general term. Anybody may include anybody in the term 'untouchable'. It has no definite legal connotation. That is why in the Government of India Act of 1935, it was felt necessary to give the word 'untouchable' some legal connotation and the only way it was found feasible to do it was to enumerate the communities which in different parts and in different areas were regarded by the local people as satisfying the test of untouchability. The same question may arise with regard to Adibasis. Who are the Adibasis? And the question will be relevant, because by this Constitution, we are conferring certain privileges, certain rights on these Adibasis. In order that, if the matter was taken to a court of law, there should be a precise definition as to who are these Adibasis, it was decided to invent, so to say, another category or another term to be called 'Scheduled tribes' and to enumerate the Adibasis under that head. Now I think my friend, Mr. Jaipal Singh, if he

were to take the several communities which are now generally described as Adibasis and compare the communities which are listed under the head of scheduled tribes, he will find that there is hardly a case where a community which is generally recognised as Adibasis is not included in the Schedule. I think, here and there, a mistake might have occurred and a community which is not an Adibasi community may have been included. It may be that a community which is really an Adibasi community has not been included, but if there is a case where a community which has hitherto been treated as an Adibasi community is not included in the list of scheduled tribes, we have added, as may be seen in the draft Constitution, an amendment whereby it will be permissible for the local government by notification to add any particular community to the list of scheduled tribes which have not been so far included. I think that ought to satisfy my friend, Mr. Jaipal Singh.

He asked me another question and it was this. Supposing a member of a scheduled tribe living in a scheduled area or a member of a scheduled tribe living in a tribal area migrates to another part of the territory of India, which is outside both the scheduled area and the tribal area, will he be able to claim from the local government, within whose jurisdiction he may be residing, the same privileges which he would be entitled to when he is residing within the scheduled area or within the tribal area? It is a difficult question for me to answer. If that matter is agitated in quarters where a decision on a matter like this would lie, we would certainly be able to give some answer to the question in the form of some clause in this Constitution. But, so far as the present Constitution stands, a member of a scheduled tribe going outside the scheduled area or tribal area would certainly not be entitled to carry with him the privileges that he is entitled to when he is residing in a scheduled area or a tribal area. So far as I can see, it will be practically impossible to enforce the provisions that apply to tribal areas or scheduled areas, in areas other than those which are covered by them.

Sir, I hope I have met all the points that were raised by the various speakers when they spoke upon the amendments to this clause, and I believe that my explanation will give them satisfaction that all their points have been met. I hope that the article as amended will be accepted by the House.

Mr. Vice-President : I shall now put the amendments which have been moved, which number thirty, to the vote one by one. Amendment No. 412. The question is:

"That for article 13, the following be substituted:—

"12. Subject to public order or morality the citizens are guaranteed—

(a) freedom of speech and expression;

(b) freedom of the press;

(c) freedom to form association or unions;

(d) freedom to assemble peaceably and without arms;

(e) secrecy of postal, telegraphic and telephonic communications.

13-A. All citizens of the Republic shall enjoy freedom of movement throughout the whole of the Republic. Every citizen shall have the right to sojourn and settle in any place he pleases. Restrictions may, however, be imposed by or under a Federal law for the protection of aboriginal tribes and backward classes and the preservation of public safety and peace."

The amendment was negatived.

Mr. Vice-President : Amendment No. 415. I understand it has been accepted by Dr. Ambedkar.

The question is:

"That in clause (1) of article 13, the words "Subject to the other provisions of this article" be deleted."

The amendment was adopted.

Mr. Vice-President : Second part of amendment No. 416. The first part of the amendment has been already blocked as amendment No. 415 has been accepted.

The question is :

"That in clause (1) of article 13, after the words "all citizens shall have" the words "and are guaranteed" be added."

The amendment was negatived.

Mr. Vice-President : Amendment No. 420.

The question is:

"That before sub-clause (a) of clause (1) of article 13, the following new sub-clause be inserted:—

"(a-1) to freedom of thought;"

The amendment was negatived.

Mr. Vice-President : Amendment No. 421.

The question is:

"That in sub-clause (a) of clause (1) of article 13, after the word "expression", the words "of thought and worship; of press and publication;" be added."

The amendment was negatived.

Mr. Vice-President : Amendment No. 422.

The question is:

"That at the end of sub-clause (a) of clause (1) of article 13, the words "both in the Press and the Platform" be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 428.

The question is:

"That at the end of sub-clause (c) of clause (1) of article 13, the words "for any lawful purpose" be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 429.

The question is:

"That in sub-clause (d) of clause (1) of article 13, after the words "move freely" the words "in a lawful manner" be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 430.

The question is :

"That in sub-clause (e) of clause (1) of article 13, after the words "and settle" the words "in a lawful manner" be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 432.

The question is:

"That in sub-clause (g) of clause (1) of article 13, after the words "or business" the words "in a lawful manner" be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 438 as modified by amendment No. 79 of List II.

The question is:

"That for amendment No. 438* of the List of amendments, the following be substituted:—

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—

"(h) to keep and bear arms;"

and the following new clause be added after clause (6):—

"(7) Nothing in sub-clause (h) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing, in the interests of public order, peace and tranquility, restrictions on the exercise of the right conferred by the said sub-clause."

The amendment was negatived.

Mr. Vice-President : Amendment No. 440.

The question is:

"That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—

(h) to follow the personal law of the group or community to which he belongs or professes to belong.

(i) to personal liberty and to be tried by a competent court of law in case such liberty is curtailed."

The amendment was negatived.

Mr. Vice-President : Amendment No. 502.

The question is:

"That after clause (6) of article 13, the following new clauses be added:—

"(7) Nothing in clauses (2) to (6) of this article shall affect the right guaranteed under sub-clause (h) of clause (1) of this article.

"(8) Nothing in the clauses (2) to (6) shall affect the right guaranteed under sub-clause (i) of clause (1) of this article.

"(9) No existing law shall operate after the commencement of the Constitution so far as the same affects adversely the right guaranteed under sub-clause (i) of clause (1) of this article and no law shall be passed by the Parliament or any State which may adversely affect the right guaranteed under sub-clause (i) of clause (1) of this article ."

The amendment was negatived.

Mr. Vice-President : Amendment No. 445. I shall explain one thing. Honourable Members will note that I am calling out the amendments in the order in which they were moved. That is why the numbers are not consecutive. Amendment No. 445.

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* "That after sub-clause (g) of clause (1) of article 13, the following new sub-clause be added:—
(h) to keep and bear arms in accordance with regulations or reservations made by or under Union Law."

[Mr. Vice-President]

The question is:

"That the following new clause be added after clause (1) of article 13:—

'Liberty of the person is guaranteed. No person shall be deprived of his life, nor be arrested or detained in custody, or imprisoned, except according to due process of law, nor shall any person be denied equality before the law or equal protection of the laws within the territory of India.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 447.

The question is:

"That clauses (2) to (6) of article 13 be deleted and the following proviso be added to clause (1):—

'Provided, however, that no citizen in the exercise of the said right, shall endanger the security of the State, promote ill-will between the communities or do anything to disturb peace and tranquility in the country.' "

The amendment was negative.

Mr. Vice-President : Amendment No. 453 as modified by amendment No. 86 of List IV. I understand it has been accepted by Dr. Ambedkar.

The question is:

"That for clause (2) of article 13, the following be substituted:—

'(2) Nothing in sub-clause (a) of clause (1) of this article shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to libel, slander, defamation or any matter which offends against decency or morality or which undermines the security of, or tends to overthrow, the State.' "

The motion was adopted.

Mr. Vice-President : Amendment No. 449.

The question is:

"That after clause (1) of article 13, the following new clause be inserted:—

'(1-A) Nothing in sub-clause (a) shall affect the operation of any existing law or prevent any State from making any law relating to sedition or conspiracy.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 450.

The question is:

"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President : The second alternative in amendment No. 451.

The question is:

"That the following words be inserted at the beginning of clauses (2), (3), (4), (5) and (6) of article 13:—

'Without prejudice and subject to the provisions of article 8.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 452.

The question is:

"That clauses (2), (3), (4), (5) and (6) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 458.

The question is:

"That in clause (2) of article 13, after the word "sedition" the words "communal passion" be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 465.

The question is:

"That clauses (3) and (4) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 478.

The question is:

"That clause (5) of article 13 be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 454 as modified by amendment No. 89 of List I. I understand it has been accepted by Dr. Ambedkar.

The question is:

"That with reference to amendment No. *454 of the List of amendments—

(i) in clauses (3), (4), (5) and (6) of article 13, after the words "any existing law" the words "in so far as it imposes" be inserted, and

(ii) in clause (6) of article 13, after the words "in particular" the words "nothing in the said clause shall affect the operation of any existing law in so far as it prescribes or empowers any authority to prescribe, or prevent the State from making any law" be inserted."

The motion was adopted.

Mr. Vice-President : The question is:

"That in clauses (3), (4), (5) and (6) of article 13, before the word "restrictions" the word "reasonable" be inserted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 485.

The question is:

"That in clause (5) of article 13, the words "affect the operation of any existing law, or" be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 467.

The question is:

"(1) That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."

I think the 'Ayes' have it.

But before I declare the result finally I must point out that there is some kind of misunderstanding. Let me read the amendment. It was moved by Mr. Syamanandan Sahaya:

"That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."

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* "That in clauses (2), (3), (4), (5) and (6) of article 13, the words "affect the operation of any existing law, or" be deleted."

[Mr. Vice-President]

I definitely remember that several people spoke against it. I am going to put the amendment once again. Amendment No. 467.

The question is:

"(1) That in clause (3) of article 13, after the word "restrictions" the words "for a defined period" be added."

The amendment was negatived.

Mr. Vice-President : I trust that in future, honourable members will take more care before they give their verdict.

Mr. Vice-President : I put amendment No. 474 to vote.

The question is:

"That in clause (4) of article 13 after the word "restrictions" the words "for a defined period" be added."

The amendment was negatived.

Mr. Vice-President : Amendment No. 476.

The question is:

"That in clause (4) of article 13, for the words "the general public" the words "public order or morality" be substituted."

The amendmeant was adopted.

Mr. Vice-President : Amendment No. 483.

The question is:

"That in clause (5) of article 13, after the words "existing law" the word "which is not repugnant to the spirit of the provisions of article 8" be inserted."

The amendment was negatived.

Mr. Vice-President : I put No. 485 (second part), to vote.

The question is:

"That in clause (5) of article 13, for the word "State" the word "Parliament" be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 489.

The question is:

"That in clause (5) of article 13, the word 'either' and the words 'or for the protection of the interests of any aboriginal tribe' be omitted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 491.

The question is:

"That in clause (5) of article 13, for the word "aboriginal" the word "Scheduled" be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 497.

The question is:

"That in clause (6) of article 13, for the words "morality or health" the words "the general public" be substituted."

The amendment was adopted.

Mr. Vice-President : I put amendment No. 500 to vote.

The question is:

"That after clause (6) of article 13, the following new clause be added:

'(7) The occupation of beggary in any form or shape for person having sound physique and perfect health whether major or minor is totally banned and any such practice shall be punishable in accordance with law.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 13 in the form in which it emerges after the different amendments which have been passed here stand part of the Constitution."

Article 13, as amended, was adopted.

Article 13, as amended, was added to the Constitution.

Article 14

Mr. Vice-President : We come to new article 14.

(Amendment No. 504 was not moved.)

Shri H. V. Kamath: What about 13-A? That is, amendments 89, 90 and 92 of List V.

Mr. Vice-President : That has been held over. I was referring to No. 504.

Now the motion is:

"That article 14 form part of the Constitution."

Honourable Members have been supplied with a list which indicates the manner in which I propose to conduct the proceedings of the House. No. 505 has been disallowed as being verbal. 506 may be moved.

Pandit Thakur Das Bhargava: May I take the liberty of pointing out that my amendment (No. 505) is not merely verbal? It is an amendment of substance also.

Mr. Vice-President: Then I will give my ruling later on. Mr. Naziruddin Ahmad will carry on his work.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. Vice-President, I beg to move:

"That in clause (1) of article 14, after the words "greater than", the words "or of a kind other than" be inserted."

Sir, clause (1) provides—I am reading only the material part—

"No person shall be subjected to a penalty greater than that which might have been inflicted under the law at the time of the commission of the offence."

It guards against any punishment 'greater than' is provided to be inflicted upon a person. I have attempted to insert after the words 'greater than' the words 'or other than' that which might have been inflicted. There are many cases where a punishment of fine only is provided. Suppose a man is fined one lakh of rupees. An Appellate Court may turn it to an imprisonment during the sitting of the Court. That will violate the provision that where fine alone is provided for, an imprisonment may be substituted on the ground that it is not 'greater than' that. My amendment seeks to limit the powers of Courts to inflict punishment not only as to the extent but also to the kind. There are different kinds of punishments—fine, imprisonment, whipping, forfeiture and hanging and the like where only a particular kind of punishment is specifically provided, you should not award any punishment other than that. That is in short the effect of this amendment. Where whipping alone is provided, you cannot award a fine. Where fine alone is provided, you cannot award imprisonment or whipping or forfeiture. Where forfeiture of movables only is provided, you cannot forfeit immovables. Where forfeiture of articles relating to which

[Mr. Naziruddin Ahmad]

crime has been committed is provided, you cannot forfeit other kinds of things. So if we leave the powers of the court as in the clause it gives the Court the power to give any punishment not sanctioned by law. If clause (1) is to be retained, the Court should also be limited to the class of punishment provided. To me it seems that there is here a lacuna—rather oversight which should be corrected.

Mr. Vice-President : As regards amendment No. 505, I can allow the Member to move the second part of it. Pandit Thakur Das Bhargava.

Pandit Thakur Dass Bhargava: Sir, I beg to move :

"That in clause (1) of article 14, for the words 'under the law at the time of the commission' the words 'under the law in force at the time of the commission' be substituted."

Sir, if you kindly examine the definition of the expression 'law in force' as given in the explanation under article 307, it would appear that the words 'the law' and the words 'the law in force' have different meanings. Moreover as the words in the previous part of the article also appear as 'law in force', it is very necessary and proper in this juxtaposition that the amendment that I have suggested should be accepted. That is all I have to submit.

Mr. Vice-President : Amendments Nos. 507, 508 and 511 are of the same import. The most comprehensive one, *i.e,* No. 507, may be moved.

(Amendments Nos. 507, 508 and 511 were not moved.)

Amendments Nos. 509 and 510 are of similar import and may be moved together. They are in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That at the end of clause (2) of article 14, the words 'otherwise than as permitted by the Code of Criminal Procedure, 1898' be added."

Sir, I am moving these amendments with considerable anxiety in my mind. The first anxiety is that I may perhaps over step my time limit; the second anxiety is that there are a large number of observant and powerful eyes directed against me and I am afraid that a point of order may be taken at any time; and the third anxiety is the huge 'No' against me will be echoed by honourable Members and this will reverberate as thunder clap under which my feeble 'Aye' will be lost.

Then the other difficulty is that I have to crave the indulgent attention of the Honourable the Chairman of the Drafting Committee to the point I am raising. I shall restrict my point strictly to the limits of relevancy.

Sir, the words which I seek to insert deals with an important principle of criminal procedure. Clause (2) which I seek to amend runs as follows:

"(2) No person shall be punished for the same offence more than once."

A very sacred sentiment has prompted the introduction of this clause; but considered from the point of view of criminal law, it has its loop-holes.

Clause (2) seems to be rather sweeping. There are cases where a man may be legally punished twice for the same offence, and I shall submit the circumstances, with the relevant laws. Sir, the principal which deals with this subject finds a place in section 403, sub-section (1) of the Code of Criminal Procedure. The point is this. The law of punishment twice has been enacted.

Shri T. T. Krishnamachari: Sir, on a point of order. Can any Member of this House move an amendment referring to an enactment itself is out of order.

Mr. Naziruddin Ahmad : Anything else may be out of order, but not the amendment. We have already referred to and saved 'existing laws'—enactments of subordinate legislatures in article 9 and in other places. I was only referring for handy consideration to the Criminal Procedure Code. I cannot pretend to submit that Section 403, or any principle embodied in it, or any sound principle even is binding upon this House, not even the soundest of propositions, because this is a sovereign House.

I was submitting for consideration certain principles of the Criminal Procedure, not that I suggested at all that they will be binding on this House, but only that they are worthy of consideration.

Sir, it often happens—I shall submit examples from general principles because I think they would be more acceptable to Mr. Krishnamachari—it often happens that a man is punished by a Court which has no jurisdiction; it is a very ordinary experience in criminal Courts that the Judge on appeal or the High Court or the Privy Council—and now the Federal Court and later on the future Supreme Court—may and does find that the conviction is without jurisdiction. Meantime, the man has been convicted. If you say that he cannot be convicted twice, then orders of re-trial by appellate and revisional Courts would be absolutely out of the question. If a man is tried by a Magistrate or a Court having no jurisdiction, and if he is punished, that is the first punishment.

And then if it is found that the Court had no jurisdiction to try the case, what is often done is that there is a re-trial. But if you enact the principle of clause (2) that a man shall not be punished for the same offence more than once, the effect would be that if a man is punished by a Court of competent jurisdiction but there is a lacuna in the trial, or by a Court of competent jurisdiction the result will be to shut out any further trial at all. A re-trial after a conviction is an ordinary incident of daily experience in criminal Courts.

Sometimes, Sir,.....

(After a pause)

Sir, I desire to monopolise the attention of the honourable Member the Chairman of the Drafting Committee; otherwise it will be useless to argue. If he says "No", the whole House will echo him.

Mr. Vice-President : Dr. Ambedkar, Mr. Naziruddin demands your wholehearted attention. He says that if you say "No", the House will say "No". *(Laughter).*

Mr. Naziruddin Ahmad : The point which I was submitting is a point of general importance. The point is that if a man is convicted by a court of law—that is the first conviction—it may be that there is some lacuna in the trial. The accused appeals to the Court of Sessions. The Court finds that there was a lacuna in the trial or that the Court had no jurisdiction. But it may order a re-trial. Clause (2) which would effectively prevent further trial because it may involve a second conviction. There may be a first conviction of an offender in the hands of a Court, and this clause will effectively prevent a re-trial order by a superior court. This is one of the simplest examples. The principle should be not merely *convicted*, but the principle should be that a man can not be *tried* again, tried twice, if he is acquitted or convicted by a Court of competent jurisdiction, while the conviction or acquittal stands effective. In fact, it is not the first conviction that is important; it is the ultimate legality and finality of the conviction that has to be respected; the finality should attach not only to conviction but also to acquittal. What are you going to do with regard to a person who is finally acquitted after a fair

[Mr. Naziruddin Ahmad]

trial, and when the acquittal is not set aside and is therefore final and binding? You say nothing about that. You simply say that a man should not be convicted twice for the same offence. A man acquitted shall also not be liable to betried again. You say nothing about that but confine you attention to the bogey of double punishment. I submit that the so-called theory of double punishment is not all and does not give a complete picture. Take for example, a man fined Rs. 50 for an offence by a Magistrate having no jurisdiction; then he appeals to an appellate Court. The appellate Court will, by virtue of clause (2) be precluded from sending it for re-trial on any technical ground, even on the ground that the Court had no jurisdiction.

The relevant section which caused some amount of suspicion in the mind of a distinguished Member of the House, Mr. T. T. Krishnamachari, I shall with his permission and with your permission, Sir, and with the permission of the House, read. Not that it is binding, but it is a crystallised wisdom which has been handed down to us from generation to generation. Sub-section (1) of section 403 says :

"A person who has been once tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence, shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence".

I think, Sir, this is the proper form. It may be argued that the Criminal Procedure Code is a sufficient safeguard against injustice, but if you introduce it here it is a justiciable right, and we have already provided that any violation of any fundamental right is justiciable and would nullify all existing laws contrary, and therefore it will have the effect of abolishing or rather nullifying the wholesome law as laid down in sub-section (1) of section 403. I submit that the clause has got to be very carefully considered and, if necessary, should be re-drafted.

I submit that double punishment for the same offence in such cases does not in fact work injustice. What happens in such cases is that the punishment already suffered or inflicted is taken into account or adjusted in giving the final punishment in a re-trial. That is the effect of this amendment.

Mr. Vice-President : Do you intend to move amendment No. 509?

Mr. Naziruddin Ahmad : No, Sir. It deals with the same principle and I do not wish to move it.

Mr. Vice-President : I have found from the last two days' experience that 9.30 a.m. is too early an hour for many Members of the House. They seem to think that others will come at the proper time and they need not come, with the result that there is difficulty in starting our work at the proper time. I have therefore decided that from tomorrow we shall start at 10 a.m. and break up at 1.30 p.m.

The Assembly then adjourned till Ten of the Clock on Friday the 3rd December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 3*rd December* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

STATEMENT *RE.* EIRE ACT

Mr. Vice-President (Dr. H. C. Mookherjee) : When our Prime Minister laid before the House the conditions which govern the entry, or rather, the withdrawal of Ireland from the United Kingdom, there were a few Members . . . . . *(Interruption).*

The Honourable Pandit Jawaharlal Nehru (United Provinces : General): May I say something on this, Sir?

Mr. Vice-President : Yes.

The Honourable Pandit Jawaharlal Nehru : I merely wish to state that I have placed on the Table of the House a telegram that I have received from the Foreign Minister of Eire. In the course of some discussion, I remember—I forget who it was—when an honourable Member wanted to have a copy of the new Bill which is being considered by the Irish Parliament, I said I would enquire. I asked for it by telegram; we do not have it here. We have been informed that the actual Bill is coming by air mail, but by telegram they have sent us the text of the Bill which is a very short one, four or five Sections of a line each. That is laid on the Table of the House for such Members as wish to see it.

Shri S. V. Krishnamurthy Rao (Mysore State) : Will you please have it cyclostyled and circulated to all members?

The Honourable Pandit Jawaharlal Nehru: No, Sir, I object. The telegram is laid on the Table and members can see it.

Mr. Vice-President : Before we begin the business of the House, I would like to inform honourable Members that I have received a letter from our President informing me that he is making rapid improvement and that it is very likely that he will be able to resume his duties from the 27th. He has expressed his regret on account of his inability to preside over the deliberations of this House and I have informed him already that we are fully aware of the circumstances which are responsible for his absence. I understand from the papers that he reaches his 64th year today. May I, with the permission of the House, send him our congratulations and at the same time assure him how much we feel his absence? In this connection, I shall also tell him that though I am fully aware of my many lapses from the technicalities of parliamentary practice, I have been able to carry on so far with the goodwill of the House.

Honourable Members: Certainly.

DRAFT CONSTITUTION—(*Contd.*)

Article 14—(*Contd.*)

Mr. Vice-President : We shall now resume discussion of article 14. Amendment 510 was moved. 509 will be put to vote. So we next come to 512.

Kazi Syed Karimuddin (C. P. & Berar : Muslim): Mr. Vice-President, Sir, I beg to move :—

That in article 14, the following be added as clause (4) :—

> "(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

This is a very important amendment. You will be pleased to find that this finds place as article 4 in the American Constitution and in the Irish Constitution there are clauses (2) and (5) which are similar and in the German Constitution there are articles 114 and 115 on the same lines. In the book of Dr. Ambedkar—Minorities and States—on page 11, item No. 10, a similar provision has been made. Thus, this is an amendment, the correctness of which cannot be challenged. What is the situation in India today? In India, in practically every province, there are Goonda Act and Public Safety Act which do not provide for any appeals or representations, and which give no opportunity to the persons concerned to defend themselves. Arrests are made without warrant and searches without justification. We are being governed by lawless laws and there is no remedy for the redress of grievances on account of unauthorised arrests and searches.

We have seen in 1947, and in the beginning of 1948, that hundreds of thousands of people were arrested and houses were searched merely on suspicion. The result is that the morale of the members of the Muslim minority community was undermined and they were treated just like criminals in the country. I will give the house one very important instance. Whenever we went to an aerodrome to go to Delhi, our belongings were searched without any reason, without any cause and without any warning. I will now give another instance. When there was police action in Hyderabad, every Muslim worth the name was arrested without any justification in the adjoining provinces. If those Muslims were really traitors they ought to have been prosecuted, punished and hanged. But people who had nothing whatever to do with Hyderabad were arrested under the pretence that they were taken only under protective custody. Well, if they were taken under protective custody, why were their women and children who were outside not taken under this protective custody?

Therefore my submission is that unless this fundamental right that I have asked for in this amendment is guaranteed, there will be no end to these arrests without warrants and to these searches without justifications. I have moved this amendment in the earnest hope that it would be accepted.

Mr. Vice-President : The next amendment in the List is the one standing in the name of Mr. Kakkan.

Shri P. Kakkan (Madras: General): Sir, I do not want to move it. But, with your permission I wish to speak on it.

Mr. Vice-President : That I can not permit. I can give the honourable Member an opportunity to speak in the course of the general discussion on

article 14. I think, as there are no other amendments to this article, the House can now take up the general discussion of this article. Mr. Kakkan may now make the speech he wanted to.

Shri P. Kakkan : Mr. Vice-President, I had given notice of an amendment to this article only with a view to speak on it.

Sir, what I have got to say concerns the jail administration. In the jails they make a distinction between prisoners and prisoners in allotting duties in the jails. If a prisoner belongs to the Harijan community he is compelled to do scavenging work, no matter what his class or rank or education is. Prisoners belonging to other communities are not similarly forced to do scavenging work. On this occasion I desire to express my opinion and my feeling that this distinction in the matter of the allotment of work to prisoners inside the jails should be removed forthwith. Sir, I know from experience that the members of the Harijan community are treated in jails very cruelly, as if they are God's creatures and that He created them for doing scavenging work. I earnestly hope that this distinction will be removed hereafter and that Harijans will get impartial treatment everywhere. It is with this object that I have stated in my amendment that no person convicted for any offence shall be compelled to work in jail (*caste war*) in respect of religion, caste, race or class. I thank you, Sir, for giving me this opportunity to speak.

Shri T. T. Krishnamachari (Madras : General) : Mr. Vice-President, Sir, the point I have to place before the House happens to be a comparatively narrow one. In this article 14, clause (2) reads thus: 'No person shall be punished for the same offence more than once'. It has been pointed out to me by more Members of this House that this might probably affect cases where, as in the case of an official of Government who has been dealt with departmentally and punishment has been inflicted, he cannot again be prosecuted and punished if he had committed a criminal offence; or, *per contra,* if a Government official had been prosecuted and sentenced to imprisonment or fine by a court, it might preclude the Government from taking disciplinary action against him. Though the point is a narrow one and one which is capable of interpretation whether this provision in this particular clause in the Fundamental Rights will affect the discretion of Government acting under the rules of conduct and discipline in regard to its own officers, I think, when we are putting a ban on a particular type of action, it is better to make the point more clear.

I recognise that I am rather late now to move an amendment. What I would like to do is to word the clause thus: 'No person shall be prosecuted and punished for the same offence more than once.' If my Honourable Friend Dr. Ambedkar will accept the addition of the words 'prosecuted and' before the word 'punished' and if you, Sir, and the House will give him permission to do so, it will not merely be a wise thing to do but it will save a lot of trouble for the Governments of the future. That is the suggestion I venture to place before the House. It is for the House to deal with it in whatever manner it deems fit.

Mr. Vice-President : Does the House give the permission asked for by Shri T.T. Krishnamachari?

Honourable Members : Yes.

Mr. Vice-President : Now I will call upon Dr. Ambedkar to move the amendment suggested by Shri T. T. Krishnamachari.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, with regard to the amendments that have been moved to this article, I can say

[The Honourable Dr. B. R. Ambedkar]

that I am prepared to accept the amendment moved by Mr. T.T. Krishnamachari. Really speaking, the amendment is not necessary but as certain doubts have been expressed that the word 'punished' may be interpreted in a variety of ways, I think it may be desirable to add the words "prosecuted and punished".

With regard to amendments Nos. 506 and 509 moved by my friend, Mr. Naziruddin Ahmad.....

Mr. Naziruddin Ahmad : It is No. 510.

The Honourable Dr. B. R. Ambedkar : Anyhow, I have examined the position the whole day yesterday and I am satisfied that no good will be served by accepting these amendments. I am however prepared to accept amendment No. 512 moved by Mr. Karimuddin. I think it is a useful provision and may find a place in our Constitution. There is nothing novel in it because the whole of the clause as suggested by him is to be found in the Criminal Procedure Code so that it might be said in a sense that this is already the law of the land. It is perfectly possible that the legislatures of the future may abrogate the provisions specified in his amendment but they are so important so far as personal liberty is concerned that it is very desirable to place these provisions beyond the reach of the legislature and I am therefore prepared to accept his amendment.

With regard to amendment No. 513 moved by my friend, Mr. Kakkan.....

An Honourable Member : It was not moved.

Mr. Vice-President : What about amendments Nos. 505 and 506?

The Honourable Dr. B. R. Ambedkar : I have already said that I am not prepared to accept amendment Nos. 506 and 510.

Mr. Vice-President : Have you anything to say about amendment No. 505, the second part of it as modified by amendment No. 92 in List V? Perhaps you have overlooked it. It is in the name of Pandit Thakur Dass Bhargava.

The Honourable Dr. B. R. Ambedkar : I accept the amendment moved by him.

Mr. Vice-President : I am putting the amendments one by one to the vote.

Amendment No. 505 as modified by amendment No. 92 of List V. I understand that Dr. Ambedkar accepts it. The question is:

"That in clause (1) of article 14, for the words 'under the law at the time of the commission' the words 'under the law in force at the time of the commission' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 506. The question is:

"That in clause (1) of article 14, after the words 'greater than' the words 'or of a kind other than' be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 510. The question is:

"That at the end of clause (2) of article 14, the words 'otherwise than as permitted by the Code of Criminal Procedure, 1898' be added."

The amendment was negatived.

Mr. Vice-President : Amendment No. 512 moved by Kazi Syed Karimuddin and accepted by Dr. Ambedkar. The question is:

That in Article 14, the following be added as clause (4):—

> "(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probable cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized."

I think the 'Ayes' have it.

Shri T. T. Krishnamachari: The Noes have it.

Mr. Vice-President : I will again put it to the vote.

I think the 'Ayes' have it.

Shri T. T. Krishnamachari: No, Sir, the Noes have it.

Mr. Vice-President : I shall first of all call for a show of hands.

(The Division Bell was rung.)

Shri Mahavir Tyagi (United Provinces: General): May I propose that this question might be postponed for the time being and a chance be given for the Members to confer between themselves and arrive at a decision. Even the British House of Commons, sometimes converts itself into a committee to give various parties a chance to confer and arrive at an agreed solution.

Mr. Vice-President : I am prepared to postpone the voting on this amendment provided the House gives me the requisite permission. I would request the House to be calm. This is not the way to come to decisions which must be reached through co-operative effort and through goodwill. Does the House give me the necessary power to postpone voting on this?

The Honourable Pandit Jawaharlal Nehru: Mr. Vice-President, Sir, as apparently a slight confusion has arisen in many members' minds on this point, I think, Sir, that the suggestion made is eminently desirable, that we might take up this matter a little later, and we may proceed with other things. It will be the wish of the House that will prevail of course. I would suggest to you, Sir, and to the House that your suggestion be accepted.

Dr. B. V. Keskar (United Provinces: General): Can it be done after the division bell has rung?

Mr. Vice-President : I never go by technicalities. I shall continue to use common-sense as long as I am here. I have little knowledge of technicalities, but I have some knowledge of human nature. I know that in the long run it is good sense, it is common-sense, it is goodwill which alone will carry weight. I ask the permission of the House to postpone the voting.

Honourable Members: Yes.

Article 15

Mr. Vice-President : Then we shall pass on to the next article. The next amendment is No. 514 but as Mr. Lari is absent, I shall pass on to the next article.

Shri T. T. Krishnamachari: May I suggest that discussion of this article be postponed, as it is being examined and the Members of the House would like to take some more time for the consideration of this particular article?

Article 15-A

Mr. Vice-President : Very well: Then I pass on to Article 15-A (New article). Amendment No. 534 seeks to rule out capital punishment. I think it is blocked in view of the fact that a similar amendment was put to vote and rejected.

(Amendment Nos. 535 and 536 were not moved.)

Article 16

Mr. Vice-President : The motion before the House is that Article 16 form part of the Constitution.

An Honourable Member: What about Article 15?

Mr. Vice-President : Article 15 has been held over—Honourable Members must have been inattentive not to hear the suggestion made by Mr. T. T. Krishnamachari and accepted by the Chair. Amendment No. 537 I rule out of order as it is a negative amendment.

(Amendments Nos. 538, 539 and 540 were not moved.)

Amendment No. 542 is already covered by the provision relating to ban on cow-killing passed by the House previously.

Shri C. Subramanian (Madras : General): Mr. Vice-President, Sir, I find some difficulty in accepting this article as an article coming under fundamental rights. The article reads: "Subject to the provisions of article 244 of this Constitution and of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free." Before referring to the difficulty, which I feel, I will refer the House to the sections in the Draft Constitution which deals with trade and commerce.

There are three Articles 243, 244 and 245 which deal with this subject 'inter-state trade and commerce' in the body of the Draft. Then in the list of legislative powers in the Union list, we find in article 73 "inter-state trade and commerce subject to the provisions of entry 33 of List No. II". Then item 32 in List II is "trade and commerce within the state; markets and fairs"; and item 33 refers to the "regulation of trade, commerce and intercourse on other States for the purposes of the provisions of article 244 of this Constitution." Therefore, you will find inter-state trade and commerce, subject to article 244, is a Union subject. Parliament can deal with it. Trade and commerce within the state and inter-state commerce as provided in article 244 are given to the State Legislatures. You will find, Sir, that in article 244, even though it might be inter-state trade and commerce, the State Legislature is given certain powers to impose certain taxes and impose certain restrictions. Having this in mind, if we come to Article 16, we find the words "subject to the provisions of article 244 of this Constitution", that is, even in respect of inter-state trade and commerce, the State Legislature has been given certain powers and that is not touched by this article. Therefore leaving that, the article would read "subject to the provisions of any law made by Parliament, trade and commerce and intercourse through the territory of India shall be free". I really fail to understand how this can be a fundamental right and whether there is any right at all reserved. The very conception of a fundamental right is that there is a certain right taken out of the province of the legislature either of the Union or of the State. To put it in other words, the sovereignty vests in the public, but that sovereignty is delegated to the legislatures or the sovereignty is expressed through the legislatures in respect of certain subjects.

But, in respect of certain fundamental rights we say the Parliament or the Government shall have no power of interference. So much so, the

sovereignty of the people is absolute in that respect. It is neither delegated, nor is anybody else authorised to deal with that sovereignty. If we examine this article in that view, what is the residue of right left which could not be touched either by the legislature of the Union or by the legislature of the State? You find stated here, "Subject to the provisions of any law made by Parliament, trade, commerce and intercourse throughout the territory of India shall be free". Here, the sovereignty of the Parliament is absolute. There is no right which is taken out of the province of the legislatures. The right which is reserved here as a Fundamental right should be one, which neither the Union Legislature nor the State Legislature can touch. There is no such right left here. Mind you, here the wording in Article 16 is, 'Subject to any law made by Parliament' without any limitation whatsoever. So much so, it comes to this: there shall be free trade throughout the territories of India, subject to the powers of Parliament. I respectfully submit that that would not be a fundamental right.

I know there are certain friends of mine who think that the vesting of powers in the Parliament as against the State itself is a fundamental right. That was what was expressed by certain friends. If that logic is extended to its conclusion, all the subjects dealt with in List I would be fundamental rights! That is not the case. The very conception of a fundamental right is that neither the Parliament, nor the State legislatures shall have power to interfere. Here, you make the Parliament sovereign. Only subject to the powers of Parliament, there shall be free trade, commerce and intercourse throughout the territories of India. I find it difficult to see what is the right which has been taken out of the province of the legislatures, either the Parliament or the State legislatures, and which has been reserved here as a fundamental right. It may be all right to say that in respect of free trade, only the Parliament shall have power. That is allocation of administrative powers or legislative powers between the Union legislature and the State legislature. Certainly that is not a fundamental right. As one of my friends pithily put it, it is a fundamental right in favour of the Parliament; it is not a right in favour of any citizen or class of citizens. In these circumstances, I wish the honourable Mover, though I find him preoccupied with other things,—I do not know whether he has followed my speech—to explain how this comes under the Chapter on Fundamental Rights, and what is the right reserved.

Mr. Vice-President : May I suggest, Mr. Subramaniam, that you make a definite suggestion so that Dr. Ambedkar may be in a position to reply?

Shri C. Subramaniam: The definite suggestion is this. For the sake of Dr. Ambedkar, I shall state my point again. My complaint in regard to Article 16 is this. There is no right which has been taken out of the province of the legislature, either of the Union or of the States, to say that a fundamental right has been reserved in article 16. Because, you will find it is stated here, "Subject (leaving alone reference to article 244) to the provisions of any law made by Parliament, trade and commerce and intercourse throughout the territory of India shall be free". You see the right is subject to any law made by Parliament without any restrictions whatsoever. You have secured the sovereignty of the Parliament in respect of this subject, and Parliament can do anything. To be a fundamental right, it should have been taken out of the province of the legislatures, either of the Union or of the States. I find there is left no residue of any right which could not be touched either by Parliament or by the State legislature and as such, it would not properly come under the Chapter on Fundamental Rights. It may be a matter of allocation of powers between the Parliament and the State legislatures in saying that the Parliament alone shall deal with subjects relating to free trade within the territories

[Shri C. Subramaniam]

of India. We can as well put in entry 73 of List I. You can also make some restriction in entries 32 and 33 of List II, that it shall be subject to matters relating to free trade in India. I would request the Honourable mover, to enlighten me whether, as a matter of fact, there is any right left which has been taken out of the province of the legislatures and the Government and whether it will be proper to have article 16 here, in this chapter dealing with fundamental rights.

The Honourable Shri K. Santhanam (Madras : General): Sir, the only way to test whether article 16 is necessary is to find out the consequences of deleting article 16. Suppose article 16 is not there, what will happen? According to the lists in the schedule, the Centre will have the right to legislate on all matters of trade between the various provinces, and according to article 243, no province can make any discrimination against any province or State. According to Article 244, there can be no discrimination taxation. According to article 244 (b), every State (this includes every provincial legislature) will have the right to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse with that State as may be required in the public interests. Therefore, each provincial legislature and each State legislature will have the right to impose restrictions on the freedom of trade, commerce or intercourse. Supposing a variety of restrictions are imposed by all the legislatures and it is found desirable to rationalise them, to bring them into some kind of uniformity, there will be no power vested in any agency. Article 16 gives that power to the Parliament. It cannot interfere with the provincial jurisdiction so far as trade and commerce are concerned within that particular province.

Shri C. Subramaniam: That authority is provided for in Article 245.

The Honourable Shri K. Santhanam: Article 245 says: "Parliament may by law appoint such authority as it considers appropriate for the carrying out of the provisions of articles 243 and 244 of this Constitution and confer on the authority so appointed such powers and such duties as it thinks necessary". This is only for the purpose of regulation; it does not provide any legislative power for any co-ordination, correlation or standardisation of all the restrictions that may be imposed by the various legislatures, and therefore, that power is contained in article 16. Mr. Subramaniam asks, then it means that the whole power is taken out of the hands of the province. I say, it is not.

Shri C. Subramaniam: My point is this: A fundamental right is not a question of conferring power on Parliament or on the State legislature; it is taking away both from the Union Parliament and from the State legislature; that alone is a fundamental right. Fundamental rights do not deal with allocation of powers at all.

The Honourable Shri K. Santhanam: I do not think Mr. Subramaniam is correct. A fundamental right may consist of this provision that the State legislature shall not interfere in one matter and that that matter can be interfered with only by Parliament; or a fundamental right may be that the Parliament shall not interfere with a matter and only the State legislature may do it. Distribution of powers and the consequent results on the citizens are as much matters of fundamental rights which accrue to the individual. If all the clauses on fundamental rights are scrutinised you will find that in many cases, we have made provision that in this matter, the Parliament may interfere, but the State legislature may not interfere. Therefore, I think that in the interests of freedom of trade, article 16 is absolutely essential and without article 16, the whole structure may become so complicated that almost fancy restrictions and fancy laws may be made by the provincial legislatures, and the internal trade

of India may become clogged and obstructed. Therefore, I suggest that article 16 should continue.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I do not find any inconsistency nor do I find article 16 unnecessary. I agree with my friend. Mr. Subramaniam that if there is nothing left and the whole sphere of inter-state commerce can be regulated either by the States concerned or by the Parliament, there is no need for Fundamental right but I do not agree that there is nothing left as he expects or as he is afraid. Some rights of freedom of speech etc. are given under article 13. Article 16 ensures freedom of trade, commerce and intercourse throughout the territory of India. That is the Fundamental Right. Exceptions are made under article 244 in favour of the States and of any law made by Parliament under the other article. So far as laws made by Parliament are concerned, Parliament can act only in so far as certain powers are conferred on it under list I. So far as the States are concerned they can come under list II. Entry No. 32 in the State List refers to trade and commerce within the States. Now so far as trade and commerce within the State is concerned, it is the exclusive jurisdiction of the States. I am only giving an instance as to why this article is necessary in the Chapter on Fundamental Rights.

In my presidency there are two districts; one is in the north and the other is in the south, growing cotton, one is in the Andhra and the other is in the Tamil Nad. Today the district in the south is a progressive district and it has a number of cotton mills and is utilising all cotton and is sending out yarn and cloth to other parts of the Presidency. There is a move in the northern district which grows cotton to establish certain spinning mills. We will assume that the Madras Government tries to impose certain restrictions and says that the new spinning mill that is going to be established in Cuddappah shall not send any of its yarn to any of the districts which have been already served by the Coimbatore mills. There is absolutely no provision here which prevents this. Unless a proviso is given to that extent, there is nothing preventing any State or any particular State making discrimination between one district and another. Under article 243 we cannot make any distinction between one state and another. But within the State itself there is nothing preventing a State from exercising its right by way of discrimination. There is a possibility. Let us take Bombay Presidency. Ahmedabad has got textile mills. Bombay also has got some mills. Now it is open to the legislature to prevent, as it is, the Southern portion of the Bombay Presidency from developing its resources altogether by imposing a restriction that it shall not send any of its produce or products to any other part of the Bombay Presidency.

Shri C. Subramaniam: May I point out it is covered by 13 (g)?

Shri M. Ananthasayanam Ayyangar: 13 (g) says:—

"to practice any profession or to carry on any occupation, trade or business."

You are allowed to carry on an occupation by manufacturing this but it is not as if you can carry on a business irrespective of any other consideration.

Pandit Lakshmi Kanta Maitra (West Bengal : General): It deals with commerce and intercourse.

Shri M. Ananthasayanam Ayyangar: It deals with commerce and trade and there is a third word 'intercourse' also. I am coming to it. So far as commerce and trade is concerned I beg to submit that it is not covered by article 13 (g). Let us now refer to sub-clause (6) which says—

"(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law, or prevent the State from making any law, imposing in the interests of public order, morality or health, restrictions on the exercise of the right conferred by the said sub-clause and in particular prescribing or empowering any authority to prescribe, the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business."

[Shri M. Ananthasayanam Ayyangar]

But it does not mean that you can impose any sort of restriction. It comes under clause (g). It comes under clause (6) of article 13 and therefore there is necessity for an independent clause like article 16, which gives to every man freedom of trade, commerce and intercourse throughout the length and breadth of India.

As regards the word 'intercourse' also, apart from trade and commerce, for various purposes intercourse from one province to another is necessary. That is also not provided for in the Fundamental rights either in article 13 or elsewhere.

Shri C. Subramaniam: That is purely the province of the Parliament.

Shri M. Ananthasayanam Ayyangar: With reference to States, what happens?

Shri C. Subramaniam: You cannot discriminate.

Mr. Vice-President : I am afraid there is a lot of infringment of Parliamentary procedure and of irregularity among people who have more experience than I have.

Shri M. Ananthasayanam Ayyangar: Article 243 says—

"No preference shall be given to one State over another nor shall any discrimination be made between one State and another by any law or regulation relating to trade or commerce, whether carried by land, water or air."

This prevents discrimination between one State and another State. There is no article here which says that you ought not to discriminate between one part of a State and another part of the State. This is also covered by article 16; I beg to submit, Sir, that so far as discrimination between one area of the State and another is concerned there is no provision: and if not for any other reason, at least for this, this article is necessary.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, what I understood from Mr. Subramaniam, if I have understood him correctly is not that he objects to article 16, but his objection is directed to the place which this article finds. He says that although there may be utility and necessity so far as this article is concerned, it ought not to find a place in the fundamental rights. And his second point, if I have understood him correctly is that as this article is made subject to article 244, article 16 may be completely nullified, and to use his own words, no residue of it might be left if the powers given under article 244 were exercised. I think I am right in thus summarising what he said.

Now, I quite appreciate the argument that this article 16 is out of place in the list of fundamental rights, and to some extent, I agree with Mr. Subramaniam. But I shall explain to him why it was found necessary to include this matter in the fundamental rights. My Friend, Mr. Subramaniam will remember that when the Constituent Assembly began, we began under certain limitations. One of the limitations was that the Indian States would join the Union only on three subjects—foreign affairs, defence and communications. On no other matter they would agree to permit the Union Parliament to extend its legislative and executive jurisdiction. So he will realise that the Constituent Assembly, as well as the Drafting Committee, was placed under a very serious limitation. On the one hand it was realised that there would be no use and no purpose served in forming an All-India Union if trade and commerce throughout India was not free. That was the general view. On the other hand, it was found that so far as the position of the States was concerned, to which I have already made a reference, they were not prepared to allow trade and commerce throughout India to be made subject to the legislative authority of the Union

Parliament. Or to put it briefly and in a different language, they were not prepared to allow trade and commerce to be included as an entry in List No. I. If it was possible for us to include trade and commerce in list I, which means that Parliament will have the executive authority to make laws with regard to trade and commerce throughout India, we would not have found it necessary to bring trade and commerce under article 16, in the fundamental rights. But as that door was blocked, on account of the basic considerations which operated at the beginning of the Constituent Assembly, we had to find some place, for the purpose of uniformity in the matter of trade and commerce throughout India, under some head. After exercising considerable amount of ingenuity, the only method we found of giving effect to the desire of a large majority of our people that trade and commerce should be free throughout India, was to bring it under fundamental rights. That is the reason why, awkward as it may seem, we thought that there was no other way left to us, except to bring trade and commerce under fundamental rights. I think that will satisfy my friend Mr. Subramaniam why we gave this place to trade and commerce in the list of fundamental rights, although theoretically, I agree, that the subject is not germane to the subject-matter of fundamental rights.

With regard to the other argument, that since trade and commerce have been made subject to article 244, we have practically destroyed the fundamental right, I think I may fairly say that my friend Mr. Subramaniam has either not read article 244, or has misread that article. Article 244 has a very limited scope. All that it does is to give powers to the provincial legislatures in dealing with inter-state commerce and trade, to impose certain restrictions on the entry of goods manufactured or transported from another State, provided the legislation is such that it does not impose any disparity, discrimination between the goods manufactured within the State and the goods imported from outside the State. Now, I am sure he will agree that that is a very limited law. It certainly does not take away the right of trade and commerce and intercourse throughout India which is required to be free.

Shri C. Subramaniam: The clause says that it shall be lawful for any State to impose by law such reasonable restrictions on the freedom of trade, commerce or intercourse....as may be required in the public interests.

The Honourable Dr. B. R. Ambedkar: Yes, but reasonable restrictions do not mean that the restrictions can be such as to altogether destroy the freedom and equality of trade. It does not mean that at all.

Sir, I therefore submit that the article as it stands is perfectly in order and I commend it to the House.

Mr. Vice-President : I shall now put the article to the vote.

The question before us is that:—

Article 16 stand part of the Constitution.

The motion was adopted.

Article 16 was added to the Constitution.

Article 17

Mr. Vice-President : Now we come to article 17.

The motion before the House is that article 17 form part of the Constitution.

There are a number of amendments to this article, and they will be gone through now. The first in my list is No. 543. It is a negative one and is therefore ruled out.

There is an amendment to this amendment, that is No. 93 in List V, standing in the name of Shri Ram Chandra Upadhyaya.

(Interruption by Mr. Kamath.)

[Mr. Vice-President]

Yes, Mr. Kamath, you are observing that there are other amendments?

Shri H. V. Kamath (C. P. and Berar: General): Yes, Sir. No. 544.

Mr. Vice-President : But I have not called out that. I was dealing with No. 543, and amendment No. 93 to amendment No. 543.

Shri H. V. Kamath: But Sir, that has not been moved. How can an amendment to that amendment be moved or even called?

Mr. Vice-President : Are you pointing out my mistake? Have I not already confessed that I am innocent of all these rules? Is it necessary to-rub it in every time, Mr. Kamath?

Now, we come to amendment No. 544, standing in the name of Kazi Syed Karimuddin.

Shri H. V. Kamath: I do not in the least presume to advise you, Sir.

Kazi Syed Karimuddin: Mr. Vice-President, Sir, I move:

That for article 17, the following be substituted:

"17. Neither slavery nor involuntary servitude such as *begar* except as a punishment for crime shall exist within the Union State."

Sir, there is not much of a change in the amendment I am moving. But article 17(1) does not cover cases in which prisoners are asked to work, a prisoner is asked to work against his own free will. If this article is allowed to remain as it is, then the jail authorities will not be allowed to take work from the prisoners. Therefore I have mentioned the words "except as a punishment for crime". I may point out that such an article finds a place in the American Constitution also.

Mr. Vice-President : Amendment No. 545. Shri Damodar Swarup Seth.

Shri Damodar Swarup Seth (United Provinces: General): Sir, I move:

"That the following words be added at the beginning of clause (1) of article 17:—

'Servitude and serfdom in all forms as well as'."

I do not think this is a point on which one is required to speak at length. I will therefore, only like to submit that in some States serfdom and servitude in some form or another prevails. Moreover, in the South customs like devadas is have taken root.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : What is serfdom as distinguished from servitude?.

Mr. Vice-President : The Honourable Member wants to know from you what is the meaning of serfdom.

Shri Damodar Swarup Seth: It is a form of servitude or I may say, 'slavery' that prevails in States.

Mr. Vice-President : Probably it is his idea with respect to this distinction between serfdom and servitude.

The next three amendments are Nos. 546, 547 and 548, of which the most comprehensive is No. 546, standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah (Bihar : General) : Sir, I move:

"That in clause (1) of article 17, for the words 'Traffic in human beings and *begar*', the words 'Traffic in human beings or their dedication in the name of religion to be Devadas is or be subject to other forms of enslavement and degradation and *begar*' be substituted."

In commending this motion I should like to point out that by "Traffic in human beings". I understand the possibility of buying and selling as if these human beings were chattels, and as such ought to be prohibited. The

common understanding interprets these words to mean slavery as it was practised in olden countries, and, until recent times, even in the so-called civilized countries of Europe or America. It is but right that such traffic should be abolished.

But the traffic in human beings is not confined only to what was known as slavery in recent times. It happens,—and perhaps it happens on a much larger scale than innocent Members of this House may be aware—in what is known as White Slave traffic, namely, the buying and selling of young women for export or import, from one set of countries to another; and their permanent enslavement or servitude to an owner or proprietor of the establishments of commercialised vice probably for life.

This is covered no doubt by ordinary forms of legal contract, where the contracting parties are presumed to be free agents. How far such legal contracts are truly lawful if interpreted in the spirit of the law, I cannot say. But that these contracts offend very much against the common sense of all civilized humanity, I am prepared to assert.

Accordingly, I would like it very clearly to be understood by this amendment that "traffic in human beings" does not consist only of buying and selling of what were formerly known as slaves: but also this new type of slavery which in effect is a very large scale commercialised vice that the so-called civilized countries have popularised, or, may I say, have made an industry of.

This may not perhaps have been in the minds of the draftsman of this clause. But I think the House would do well to bear it in mind, and to accept this amendment by which such a practice would be perfectly clearly and expressly prohibited.

I have, no doubt, worded my amendment with reference to a particular form of slavery which prevails in this country to a large extent, namely, dedication, in the name of religion, of young women to be *Devadasis*, and as such devoted to immoral traffic almost from an immature age. This also I think ought to be stopped. The name or cloak of religion should not help all those who indulge in such traffic; and the Constitution should make no bones about prohibiting this, if I am right in reading the spirit of this article which would prohibit all kinds of traffic in human beings.

Forced labour is no doubt an evil; and the peculiar form of it, which is known by the word "begar", that is to say of compulsory work without payment, and work at command, should also be stopped. But more than anything else. I would like by this amendment to emphasize this highly immoral, and; I was going to say, in human traffic, which prevail on a very large scale, much larger than perhaps the House realizes, and as such I commend this amendment to the House.

Mr. Vice-President : Amendment No. 547.

Shri B. Das (Orissa : General): Sir, I do not move but I wish to speak.

Mr. Vice-President : I cannot allow you to speak. Do you want that it should be put to the vote?

Shri B. Das : No Sir, I do not move. Could you not allow me to say a word?

Mr. Vice-President : I cannot because that will create a general flutter in the House. You will have to take your chance.

Mr. Vice-President : Amendment No. 548.

Giani Gurmukh Singh Musafir (East Punjab : Sikh): Sir, my amendment reads:

"That in clause (1) of article 17, after the words, 'human beings' the words 'including prostitution' be inserted."

Mr. Vice-President : Do you want to move it?

Giani Gurmukh Singh Musafir: *[I merely want to say something.]

Mr. Vice-President : I cannot say that every Member who has sent in an amendment would find time to speak. I must make this clear, because we have to hurry.

(Amendments 549, 550 and 552 were not moved.)

Amendment No. 551: This is a verbal amendment and therefore it is disallowed.

(Amendment 553 was not moved.)

Amendment No. 554: This is a verbal amendment and therefore it is disallowed.

Amendment Nos. 555, 558 and 560 are to be considered together, I can allow No. 555 to be moved.

Shri Jaspat Roy Kapoor (United Provinces: General): I am not moving amendment No. 555.

Sardar Bhopinder Singh Man (East Punjab : General): Mr. Vice-President, Sir, I move—

"That in clause (2) of article 17, after the words "caste or class" the words "and shall pay adequate compensation for it" be inserted."

Sir, with the addition of my amendment clause (2) will read thus:

"Nothing in this article shall prevent the State from imposing compulsory service for public purposes and shall pay adequate compensation for it."

Begar is a sort of forced work from labourers and we have sought to abolish it and prohibit it in the country. The idea is that the worker should not be made to work against his will, but however an exception is made that the State can impose compulsory service for public purposes. Now, supposing the State requires any property and deprives any citizen of it, there is the accepted principle that it shall pay compensation, adequate price, for it. Similarly, when the State deprives a worker of his labour, (and I believe his labour is his property for the labourer) then I want that the State should pay compensation for it.

Shri H. V. Kamath: Mr. Vice-President, Sir, I beg to move—

"That in clause (2) of article 17, for the word "public" the words "social or national be substituted."

At the outset, may I just say that the non-English word in this article—begar—has nowhere been defined and it will be better if we define it somewhere in the constitution, if not in this article itself. Now, coming to the amendment, to my mind the word "public" does not bring out the meaning or significance of the purport of clause (2) of this article as much as the word "social" or "national" will. We all know that the services of the State—Government services—are referred to as "public services", but "national service" or "social service" has got a wider and a higher, a more comprehensive connotation than the word "public service". I remember very well that during the proceedings of the National Planning Committee, which was brought into being by Netaji Subhas Chandra Bose and presided over by Pandit Jawaharlal Nehru and to which my friend Prof. K. T. Shah rendered yeoman service for a period of well over three or four years, in that report it was suggested that all citizens should be conscripted for some social service; and Pandit Nehru when speaking on this subject went to the length of saying that no student should be awarded his academic

*[ ] Translation of Hindustani Speech.

degree unless and until he puts in six months or a year of some kind of social service. The word used there was "social service", not "public service". The word "national" has got even a still higher connotation than the word "social". My friend Dr. Ambedkar yesterday referred to this type of national service. When there is a war; when there is an emergency; when the stability of the State is threatened; when there is an insurrection; then in particular the question of national service will arise and then also will arise, as he referred to yesterday, the duty of the citizens to bear arms. In these cases, I say there must be conscription, I do not mean for military service only but for some kind of service in the national cause. Even conscientious objectors must be asked to do some kind of service, though not necessarily to bear arms and go to the front line.

Here, I would also suggest that not merely there should be no discrimination of religion, race, caste or class, but there should be no discrimination of sex either. In this connection, however I would like to sound a note of caution and that is, against the unqualified enforcement of the duty to bear arms. The duty to bear arms, to my mind, without the corresponding right to bear arms, is one of the characteristics of a totalitarian State, a police raj or a military dictatorship, and not of a democratic State which the Preamble says our future of India is going to be. The enforcement of the duty to bear arms is only the outward expression of the idea or doctrine of "dying" for the State. We must die for the State. The expression of this doctrine is the duty to bear arms. But every citizen has a higher duty to perform, and that is to "live" for the State—live for the State, and not merely die for the State—and this doctrine of "live for the State" is connected with the right to bear arms.

In the end I suggest that clause (2) of this article may be re-worded, and for the word "public service" the words "social or national" should be substituted. I would have had no objection if they had said just "public service", but "service for public purposes" is hardly appropriate, and to my mind the significance and meaning of this clause would be better expressed if we say that "nothing in this article shall prevent the State from imposing compulsory service for social or national purposes". Sir, I move.

(Amendment No. 557 was not moved.)

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move—

"That in clause (2) of article 17, after the words "discrimination on the ground" the word "only" be added."

This, Sir, is a very small, but in my opinion, a very important amendment. If it is accepted the clause would read:

".....in imposing such service the State shall not make discrimination on the ground only of race, religion caste or class."

The significance of this is so clear that, even though I have moved it, I trust the Draftsmen will accept it.

Mr. Vice-President : The clause is now open for general discussion. Giani Gurmukh Singh will now speak. I give him five minutes.

Giani Gurmukh Singh Musafir: *[Mr. Vice-President, article 17 is a useful provision in the Constitution, but there are one or two short-comings which should be removed. In this connection I had given notice of an amendment but I could not get an opportunity to speak on it. I would like to say that prostitution is not in accord with the Indian civilization.

It was imported from the West and with the departure of Western rulers it must come to an end. In clause (1) of article 17, after the words

[ ] Translation of Hindustani Speech.

[Giani Gurmukh Singh Musafir]

"Traffic in human beings" the word "Prostitution" must be included, for then alone the dignity of this clause will be increased, and defect removed. Another suggestion has been moved by Sardar Bhopendra Singh Man. It is a very good suggestion that, if the Government imposes compulsory service in the public interest, then the workers must get adequate compensation. It is good to specify in clause (2) of this article that in imposing compulsory service no discrimination on the ground of race, religion, caste or class shall be made. The right of imposing compulsory service conceded to the Government by this clause, is more or less absolutely vested in them. Even now, the government officials through their influence impose compulsory service. If provision is made to pay compensation, then this defect will disappear and the usefulness of this clause will be enhanced. Hitherto the practice of 'Begar' was a source of oppression to the poor. Now this clause would not fit in, if it is passed without providing for payment of compensation. I do not propose to say more, as the Vice-President has already ruled; and therefore, without taking much of the, time of the House, I shall mention only two points, firstly that the curse of prostitution should go from this country and secondly, compensation must be paid for compulsory service.]

Shrimati G. Durgabai (Madras : General): Mr. Vice-President, let me assure you that I will take up only one or two minutes of the valuable time of the Assembly. I want to say a few words on this article. There is the amendment of Professor Shah intended to substitute in clause (1) 'Traffic in human beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation as well as begar', for the words 'Traffic inhuman beings and begar.'

Sir, if any province has suffered from this bad practice of dedication of devadas is in the name of religion, it is the province of Madras. The worst form of this custom existed in Madras for a long time. I do not know whether this custom of dedication exists in any other province in any form. But we all know that in several ways this was practised. But, I do not think, while appreciating the object of Professor Shah in bringing forward this amendment and while being thankful to him for having realised the necessity for removing this evil, that this amendment is necessary. Madras has already prohibited this practice under a law passed a few years ago. It is no more in vogue there. Though some relics of that system still exist, these, I am sure, will disappear in course of time. I should mention in this connection my appreciation of the efforts put in by reformers like Mrs. Muthulakshmi Reddi. It is mainly on account of her efforts that this evil is no more there. Our deep debt of gratitude is due to her for her efforts. As I said, Madras has passed a law prohibiting this custom. I do not therefore think it necessary to include this provision in article 13, although I very much appreciate the spirit which has actuated Professor Shah to move this amendment.

Mr. Vice-President : I now call upon Shri B. Das to speak. He is almost the father of the House and must set an example of brevity.

Shri B. Das : Sir, on the previous occasion when we were discussing the Fundamental Principles I pointed out the need of including in the Draft Constitution the removal of this great social evil, the traffic in women. This traffic means use of force to compel women to life of prostitution. When we talk of traffic in women—which is a great social evil all over the world—I did dilate upon it last time and said that we should not be prudes and attempt to hide the fact that there existed this traffic in women in India. Sir, I bow to the decision elsewhere that I should not move my amendment which sought to add the words 'particularly in women' after the words 'Traffic in human beings'.

Sir, let us confess and admit that there is this traffic in women for which men every where are responsible. Women were often removed from Orissa. I pointed out that in the great Bengal disaster in 1943-44, lakhs of women were spirited away to the Punjab and North-West Frontier Province. Sir, young women were taken away by the alien Government into the camps of soldiers and they were thus lost to humanity, lost to family, lost to us as good citizens. So, we mere men should not fight shy of this and feel that by including an amendment of this kind we will be confessing the existence of this traffic in women in this country. That is why I gave notice of the amendment. If the House is willing to accept Shrimati Durgabai's amendment or even the amendment of Professor Shah who has confined his amendment to the Devadasi system and has not thought of the influence of dances before temples which preserve our national art and music from time immemorial.

Shri H. V. Kamath: Has Shrimati Durgabai given notice of any amendment to this article, Sir?

Mr. Vice-President : She has not.

Shri B. Das : She has sent in one to Dr. Ambedkar.

Mr. Vice-President : I have no knowledge of it.

Shri B. Das : I am sorry, I misunderstood. However, I think we will not be justifying our constitution on fundamental rights if we do not accept and admit our great sins by including the words "traffic in women" and try to save the situation now and hereafter.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, *begar* like slavery has a dark and dismal history behind it. As a man coming from an Indian State, I know what this *begar,* this extortion of forced labour, has meant to the down-trodden and dumb people of the Indian States. If the whole story of this *begar* is written, it will be replete, with human misery, human suffering, blood and tears. I know how some of the Princes have indulged in their pomp and luxury, in their reckless life, at the expense of the ordinary man, how they have used the down-trodden labourers and dumb ignorant people for the sake of their pleasure. I know for instance how for duck shooting a very large number of people are roped in forcibly to stand all day long in mud and slush during cold chilly wintry days. I know how for the sake of their game and hunting people have been roped in large numbers for beating the lion so that the Princes may shoot it. I have also seen how poor people are employed for domestic and other kinds of labour, no matter whether they are ailing or some members of their family are ill. These people are paid nothing or paid very little for the labour extorted from them. This is not the whole story. As I said in the beginning, it would make really a terrible reading if the whole story is told. I know that very often these tyrannies are perpetrated upon poor people by the petty officials. Not only do these petty officials perpetrate such tyrannies but they also extort bribes from the labourers who want to escape the curse of this *begar*. While making my observations on this article, I would like to say that I am opposed to the amendment which has been moved by Sardar Bhopindra Singh Man providing for compensation in case of compulsory labour on works for public purposes, because I feel that there is a possibility that, if this amendment is accepted, it may be misused and people might be forced against their will.

Summing up, I may add that article 13 constitutes the charter of freedom for the common man, and this article is a sort of complement to that charter of freedom. This frees the poor, down-trodden and dumb people of the Indian

[Shri Raj Bahadur]

States—I cannot say anything of other provinces—from this curse of *begar.* This *begar* has been a blot on humanity and has been a denial of all that has been good and noble in human civilisation. Through the centuries this curse has remained as a dead weight on the shoulders of the common man like the practice of slavery. The members of the Drafting Committee and this Constituent Assembly are entitled to the grateful thanks of the dumb down-trodden millions who would be freed by this article from this curse of *begar.*

Shrimati Renuka Ray (West Bengal : General): Mr. Vice-President, Sir, I shall try to be as brief as possible.

The awakened conscience of women in India and the world is fully alive to the problem of the traffic in women and cannot tolerate its continuance. Sir, if we do not accept the amendment of Mr. B. Das, it is not because we do not appreciate his purpose. We realise that he wishes to place particular emphasis on the problem of the traffic in women, but I do think that the article as it stands does cover it. I am merely pointing this out because it may be thought that the women members of this House are not alive to this problem. It is one of the most urgent of all problems on which women's organisations in this country, have focussed their attention for some time past.

As for the amendment that my honourable Friend, Mr. K.T. Shah, moved, I agree with Shrimati Durgabai that legislation has covered this problem in regard to Madras, but I think that if Mr. Shah's amendment could be accepted by this House so that the Devadasi system—the dedication of women in temples—is abolished by a categorical provision in the Constitution, it would be better procedure as the custom still lingers in some areas. Otherwise it is to be hoped that legislation abolishing the custom in other parts where it still exists will soon come in. I want to stress the fact that women are fully alive to the fact that it is the dual standards of morality that have led to traffic in women. It is when society realises fully the need for doing away with dual standards of morality that this article that is being adopted can really come into effect and become a reality and not merely a paper provision in the Constitution.

Acts for the prevention of immoral traffic in women do exist already in this country but their operation is not effective and even if legal flaws are amended, these can only become really effective when men's minds change towards this problem, whereby a section of women are at the mercy of exploiters whereby the very dignity of womenhood is lowered.

Mr. Vice-President : Mr. Nagappa, please show that you deserve the confidence that the House has placed in you by limiting yourself to five minutes.

Shri S. Nagappa (Madras : General): I will not take much time, Sir.

This practice of *begar* is prevalent in my own part of the country, especially among the Harijans. I am glad that the Drafting Committee has inserted this clause to abolish *begar*. Sir, whenever cattle die; the owner of the cattle wants these poor Harijans to come and remove the dead cattle, remove the skins, tan them and make chappals and supply them free of cost. For this, what do they get? Some food during festival days. Often, Sir, this forced labour is practised even by the government. For instance, if there is any murder, after the postmortem, the police force these people to remove the dead body and look to the other funeral processes. I am glad that hereafter this sort of forced labour will have no place. Then, Sir, this is practised in zamindaries also. For instance, if there is a marriage in the zamindar's family, he will ask these poor people, especially the Harijans, to come and whitewash his whole house, for which they will be given nothing except food for

the day. This sort of forced labour is still prevalent in most parts of the presidency.

Another thing that I want to bring to the notice of the House is that whenever the big zamindar's lands are to be ploughed, immediately he will send word for these poor people, the Harijans, the previous day, and say: "All your services are confiscated for the whole of tomorrow; you will have to work throughout the day and night. No one should go to any other work." In return, the zamindar will give one morsel of food to these poor fellows. Sir, this sort of forced labour is in practice in the 20th century in our so called civilised country. I am very thankful to this Drafting Committee. I support this article.

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, I am here primarily to oppose the amendment moved by my honourable Friend, Prof. K. T. Shah, in that it imports into the consideration of this article facts which ought not to be taken into account in a consideration of the fundamental rights that are to be incorporated in the Constitution.

Sir, if the House would permit me a moment to deal with the general principles which are the basis of this particular Part, it is that we want to ensure certain amount of rights to the individual, so that he will be ennobled. We also want to bar legislation from creeping in into those rights, which it is absolutely necessary should be maintained intact so that the individual's status might be protected. There is no point in our trying to import into this particular Part reform of all the abuses, which our society is now heir to. If those abuses are such where vested interests are likely to seek perpetuation of those abuses, well, I think we have to provide against them, but if public opinion is sufficiently mobilised against those abuses, I do not think we ought to put a blot on the fair name of India, possibly, by enacting in our constitution a ban on such abuses. Abuses which will disappear in course of time cannot disappear all at once by our putting a ban on them in the constitution. Looking as I do at such matters in that light, I wish most of my honourable Friends in this House will not try to import into these fundamental rights age-old peculiarities of ours that still persist, bad as they are in particular parts of society which can be made to disappear by suitable legislation in due course, perhaps in two, three or four years. My honourable Friend Shrimati Durgabai pointed out that this system of Devadasis obtaining in India has been abolished by legislation in Madras. There is nothing to bar other provinces from following suit and I think public opinion is sufficiently mobilised for all provinces undertaking legislation of that type. Why then put it into the fundamental rights, a thing which is vanishing tomorrow? I think the same principle might be adopted in the rest of the article that would come before the House in this particular part, namely, what we could achieve in the matter of social reform by normal legislation, we need not seek to put into the fundamental rights, but if it is a matter where the vested interests for purposes of economic gain want to perpetuate a particular anti-social custom that obtains amongst us, well, I think, it is perfectly right that we should put it into the Fundamental Rights. I think some form of forced labour does exist in practically all parts of India, call it 'begar' or anything like that and in my part of the country, the tenant often times is more or less a helot attached to the land and he has certain rights and those are contingent on his continuing to be a slave.

We are trying to root it out, and by putting it in the fundamental rights it will has ten legislation to wipe out evils of that kind as it will then become an obligation of the State. I would only mention to the House that let us not seek to enlarge the scope of these articles by putting in evils which can be wiped out by legislation, on which public opinion is sufficiently mobilised,

[Shri T. T. Krishnamachari]

but only import into it such considerations against which vested interests might conceivably take a firm stand. Sir, I support the article that is being considered by the House.

Shri Mahavir Tyagi: May I seek your permission, Mr.Vice-President. I want to clear some doubts which arise in my mind in regard to this article.

Mr. Vice-President : I am sorry, it is too late.

Shri Mahavir Tyagi: I must be told as to how I can catch your eye or draw your attention.

Honourable Members: Order, order.

Mr. Vice-President : The House has pronounced its decision.

Shri Mahavir Tyagi: Can any one, by handing over slips or by standing every time, catch your eye, Sir?

Mr. Vice-President : The House has pronounced its decision.

Shri Mahavir Tyagi: What is the decision?

Mr. Vice-President : You ask the House.

Shri Mahavir Tyagi: I feel it is very unfair.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I should like to state at the outset what amendments I am prepared to accept and what, I am afraid, I cannot accept. Of the amendments that have been moved, the only amendment which I am prepared to accept is the amendment by Prof. K.T. Shah, No. 559, which introduces the word "only" in clause (2) of article 17 after the words "discrimination on the ground". The rest of the amendments, I am afraid, I cannot accept. With regard to the amendments which, as I said, I cannot accept one is by Prof. K. T. Shah introducing the word 'devadasis'! Now I understand that his arguments for including 'devadasis' have been replied to by other members of the House who have taken part in this debate, and I do not think that any useful purpose will be served by my adding anything to the arguments that have already been urged.

With regard to the amendment of my honourable Friend, Mr. H. V. Kamath, he wants the words 'social and national' in place of the word 'public'. I should have thought that the word 'public' was wide enough to cover both 'national' as well as 'social' and it is, therefore, unnecessary to use two words when the purpose can be served by one, and I think, he will agree that that is the correct attitude to take.

With regard to the amendment of my honourable Friend Shri Damodar Swarup Seth, it seems to be unnecessary and I, therefore, do not accept it. With regard to the amendment of Sardar Bhopinder Singh Man, he wants that wherever compulsory labour is imposed by the State under the provisions of clause (2) of article 17 a proviso should be put in that such compulsory service shall always be paid for by the State. Now, I do not think that it is desirable to put any such limitation upon the authority of the State requiring compulsory service. It may be perfectly possible that the compulsory service demanded by the State may be restricted to such hours that it may not debar the citizen who is subjected to the operation of this clause to find sufficient time to earn his livelihood, and if, for instance, such compulsory labour is restricted to what might be called 'hours of leisure' or the hours, when, for instance, he is not otherwise occupied in earning his living, it would be perfectly justifiable for the State to say that it shall not pay any compensation.

In this clause, it may be seen that non-payment of compensation could not be a ground of attack; because the fundamental proposition enunciated in

sub-clause (2) is this: that whenever compulsory labour or compulsory service is demanded, it shall be demanded from all and if the State demands service from all and does not pay any, I do not think the State is committing any very great inequity. I feel, Sir, it is very desirable to leave the situation as fluid as it has been left in the article as it stands.

Shri H. V. Kamath: On a point of information, Sir, is Dr. Ambedkar's objection to my amendment merely on the ground that it consists of two words in place of one? In that case, I shall be happy if the wording is either 'social' or 'national' in place of 'public'.

The Honourable Dr. B. R. Ambedkar: It is better to use a wider phraseology which includes both.

Shri Rohini Kumar Chaudhuri: (Assam : General): May I know, Sir, does the honourable Member accept amendment No. 548, which deals with prostitution, and which was moved by Giani Gurmukh Singh Musafir?

The Honourable Dr. B. R. Ambedkar: I understand it was not moved.

Mr. Vice-President : It was not moved.

I shall now put the amendments to vote one by one.

Amendment No. 544 standing in the name of Kazi Syed Karimuddin.

The question is:

"That for article 17, the following be substituted:—

"17. Neither slavery nor involuntary servitude such as *begar* except as a punishment for crime shall exist within the Union State."

The amendment was negatived.

Mr. Vice-President : Amendment No. 545 standing in the name of Shri Damodar Swarup Seth.

The question is:

"That the following words be added at the beginning of clause (1) of article 17".

"Servitude and serfdom in all forms as well as."

The amendment was negatived.

Mr. Vice-President : Amendment No. 546 standing in the name of Professor K. T. Shah.

The question is:

"That in clause (1) of article 17, for the words "Traffic in human beings and *begar*", the words "Traffic in human beings or their dedication in the name of religion to be Devadasis or be subject to other forms of enslavement and degradation as well as *begar*" be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 560 standing in the name of Sardar Bhopinder Singh Man.

The question is:

"That in clause (2) of article 17, after the words "caste or class" the words "and shall pay adequate compensation for it" be inserted."

Sardar Bhopinder Singh Man: Sir, I request the permission of the House to withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Amendment No. 556 standing in the name of Mr. Kamath.

The question is:

"That in clause (2) of article 17, for the word "public" the words "social or national" be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 559 standing in the name of Professor K. T. Shah, accepted by Dr. Ambedkar.

The question is:

"That in clause (2) of article 17, after the words "discrimination on the ground" the word "only" be added."

The amendment was adopted.

Mr. Vice-President : I shall now put the article as a whole as modified by amendment No. 559 to vote.

The question is:

That article 17 as modified by amendment No. 559 form part of the Constitution.

The motion was adopted.

Article 17, as amended, was added to the Constitution.

Article 18

Mr. Vice-President : We now go to the next article.

The motion is that Article 18 form part of the Constitution.

The first amendment is No. 561. This is negative and therefore, it is out of order.

Amendments numbers 562 and 564: No. 562 standing in the name of Professor Shibban Lal Saksena and 564 standing in the name of Shri Damodar Swarup Seth and others are of similar import and have therefore to be considered together. Amendment No. 562 is allowed to be moved.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I am not moving the amendment; but I would like to speak on the article.

Mr. Vice-President : Then, I will allow amendment No. 564 to be moved.

Shri Damodar Swarup Seth: Sir, I beg to move:

"That the following be added at the end of article 18:

'Nor shall women be employed at night, in mines or in industries detrimental to their health.' "

Sir, it is a matter of great satisfaction that in article 18 protection has been afforded to children of minor age. But, unfortunately, for reasons not known to me, no protection has been provided for the fairer and softer sex, who had been in the past, employed in mines even at night time and in industries which are injurious to their health. I therefore think, Sir, that it is just and desirable that the addition suggested should be made in this article so that women may also be provided with due protection and may not be employed in mines at night and in industries which are not suited to their delicate health and position in society. I therefore hope that the House will accept this amendment of mine.

Mr. Vice-President: Then, comes amendment No. 563.

(Amendments 563 and 565 were not moved.)

The article is open for general discussion.

Prof. Shibban Lal Saksena: Sir, I am very glad that this article has been placed among fundamental rights. In fact, one of the complaints against this charter of liberty is that it does not provide for sufficient economic rights. If we examine the fundamental rights in the Constitutions of other countries, we will find that many of them are concerned with economic rights. In Russia particularly, the right to work is guaranteed; the right to rest and leisure, the right to maintenance in old age and sickness etc., are guaranteed. We have provided these things in our Directive Principles, although I think, properly, they should be in this Chapter. Even then, this article 18 is an economic right, that no child below the age of fourteen shall be employed in any factory. I feel, Sir, that the age should be raised to sixteen. In other countries also the age is higher; we want that in our country also this age should be increased; particularly on account of our climate, children are weak at this age and the age should be raised.

So also, I want that women should not be employed in the night or after dusk and before dawn in the factories. In fact all the progressive countries in the world have forbidden female labour after dusk and before dawn. This question was debated at length during the discussion on the Factory Act in the Parliament. I think that this is a question of very fundamental importance and this should be laid down in the Fundamental Rights that the States shall not employ women after dusk or before dawn. Sir, if this important thing had been done, we would have been hailed by innumerable women workers in the country—especially as it is a question of employing women in mines and factories. You know there was a great furore in the country during the war when women were allowed to work in mines, and I personally think that this must be considered as something very important and I hope Dr. Ambedkar will see his way to include it.

The Honourable Dr. B. R. Ambedkar: I do not accept the amendment moved by Mr. Damodar Swarup—No. 564.

Mr. Vice-President : I put the amendment No. 564 to vote.

The question is:

"That the following be added at the end of article 18:—

'Nor shall women be employed at night, in mines or in industries detrimental to health.' "

The amendment was negatived.

Mr. Vice-President : Now I put the motion—

The question is:

"That article 18 shall stand part of the Constitution."

The motion was adopted.

Article 18 was added to the Constitution.

Article 18-A

Mr. Vice-President : Now we come to a new article in the form of amendment No. 566.

Prof. K. T. Shah: Mr. Vice-President, I beg to move:

"That the following new article be inserted under the heading "Rights relating to Religion" occurring after article 18:—

'18-A. The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or others persons in the Union.' "

This, Sir, ought not to be a controversial matter at all. We have proclaimed it time and again that the State in India is secular; and as such it should

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have no concern—I should think that would follow logically—with the affairs of any religion, with the profession of any particular faith, creed or belief.

By this I do not wish to suggest that the neutrality of the State in matters of religion should mean the utter ignorance or neglect of institutions or services which may, in the name of religion or belief, be conducted by people professing a particular form of faith. All I wish to say is that with the actual profession of faith or belief, the State should have no concern. Nor should it, by any action of it, give any indication that it is partial to one or the other. All classes of citizens should have the same treatment in matters mundane from the State. And even those who may not be citizens of this State, by living within it, should receive the same treatment.

The citizens of this Union obviously belong to all professions, a wide variety of faiths or religious beliefs. To take one or the other, or even to suggest that one or the other is favoured or assisted or aided by the State in its mundane affairs at any time—if I may put it so,—would not be in the interest of the State. For it would give any other section of the people professing another belief, the impression that any particular section is preferred.

If the State can—and I believe it can very easily—promote all mundane services, all worldly activities and utilities which are for the benefit of the community collectively—no matter by what section they are carried on—then, according to my amendment, there ought to be no objection. But if the State is associated in any way with the promotion of any particular form of profession or faith, then I think it would be highly objectionable for a secular organization to do so.

Accordingly I am suggesting that "The State in India being secular shall have no concern with any religion, creed or profession of faith". I am again and again emphasising this aspect of religion because that is by its very essence, a non-worldly activity, and as such the State which is—may I say it without any disrespect—essentially an earthly organization, should have no concern.

One could dilate upon this matter for an indefinite period. I do not regard occasions of this kind, or debates of this nature to be opportunities for unconscious self-revelation or deliberate professions of one's own attitude. I therefore will not take the time of the House in going further into this subject which I am sure would interest everybody sufficiently, at any rate, to consider favourably my amendment.

(Amendment No. 567 was not moved.)

Mr. Vice-President : No. 568.

Shri T. T. Krishnamachari: May I point out that this amendment relates to a matter more or less akin to 13-A which you were good enough to keep in abeyance for the time being?

Mr. Vice-President : Then it may stand over.

(Amendment No. 569 was not moved.)

Mr. Vice-President : I put amendment No. 566 to vote.

The question is:—

"That the following new article be inserted under the heading "Rights relating to Religion" occurring after article 18:

'18-A. The State in India being secular shall have no concern with any religion, creed or profession of faith; and shall observe an attitude of absolute neutrality in all matters relating to the religion of any class of its citizens or other persons in the Union.' "

The amendment was negatived.

New articles 19 to 22.

Mr. Vice-President : Then we go to No. 570.

The first part is naturally disallowed.

Prof. Shibban Lal Saksena: First put the article to vote.

Mr. Vice-President : The article has been put to vote and passed. Now the second alternative is the same as No. 591 and will be considered along with that. The third amendment or alternative is the same as 618 and will be considered along with the other one. The last amendment has a negative effect.

Shri Lokanath Misra (Orissa : General): I do not think, Sir.

Mr. Vice-President : I am afraid you are challenging the competence of the Chair which you are not entitled to do under the Rules.

Shri Lokanath Misra: The first part of my alternative is not the same as 591, because in that I wanted to drop the word 'propogate' while it is different in 591.

Article 19

Mr. Vice-President : That was considered when the decision was made. The motion before the House is:

"That article 19 form part of the Constitution."

I shall go over the amendments one by one.

(Amendment No. 571 was not moved.)

No. 572, first alternative.

Mr. Tajamul Husain (Bihar : Muslim): Sir, I do not wish to move part one of my amendment. I have put my amendment in two parts, and with your permission, Sir, I would like to move the second part.

Mr. Vice-President : You can do that later.

Mr. Tajamul Husain: But then, Sir, later on comes the amendments No. 573 in the name of my Friend Mr. Himatsingka, and if that is not moved, then my amendment which is similar to it also goes out.

Mr. Vice-President : No, if he does not move it then you, will get your chance. And if No. 573 is moved, even then you can have your say during the general discussion. Nos. 573, 576, 577 and lastly 582 may be considered together. Of them, I take No. 573 standing in the name of Mr. Himatsingka. Is he in the House?

(The Member was not present and Amendment No. 573 was not moved.)

The next would be No. 572, second part.

Mr. Tajamul Husain: Sir, I beg to move—

"That in clause (1) of article 19, for the words "practise and propagate religion" the words "and practise religion privately" be substituted."

Sir, under article 19, clause (1) all persons are entitled to freedom of conscience and the right freely to progress, practise, and propagate religion. (I agree, Sir, that people should have the right to freely profess and practise religion, but I am afraid, it will be wrong to allow people to propagate religion in this country.) Sir, my speech will be brief, because I have been seriously ill and I feel the strain while speaking.

I feel, Sir, that religion is a private affair between oneself and his Creator. It has nothing to do with others. My religion is my own belief, and your religion, Sir, is your own belief. Why should you interfere with my religion, and why should I interfere with your religion? Religion is only a means for

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the attainment of one's salvation. Supposing I honestly believe that I will attain salvation according to my way of thinking, and according to my religion, and you Sir, honestly believe that you will attain salvation according to your way, then why should I ask you to attain salvation according to my way, or why, should you ask me to attain salvation according to your way? If you accept this proposition, then, why propagate religion? As I said, religion is between oneself and his God. Then, honestly profess religion and practise it at home. Do not demonstrate it for the sake of propagating. Do not show to the people that this is your religion for the sake of showing. If you start propagating religion in this country, you will become a nuisance to others. So far it has become a nuisance.

I submit, Sir, that this is a secular State, and a secular state should not have anything to do with religion. So I would request you to leave me alone, to practise and profess my own religion privately. That is all I wish to say, Sir, because I am not keeping good health. I commend my amendment to the Honourable House and especially to the Honourable Dr. Ambedkar, hoping that he will accept it. With these words, I sit down.

Mr. Vice-President : Amendment No. 570 in the name of Mr. Misra. Do you want it to be put to the vote?

Shri Lokanath Misra: Sir, I wanted to move it.

Mr. Vice-President : I know. But that has been disallowed. I want to know if you want it to be put to the vote.

Shri Lokanath Misra: Yes, Sir.

(Amendment Nos. 576, 577, First Part of 582 and 575 were not moved.)

Mr. Vice-President : Then the next amendment is No. 578 in the name of Mr. Naziruddin Ahmad. This is disallowed as being a verbal amendment. Then I come to amendments No. 579 and No. 580. They are almost identical, and therefore I am asking the mover to move No. 579. That also stands in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I move:

"That in clause (1) of article 19, for the words 'are equally entitled to freedom of conscience and the right', the words 'shall have the right' be substituted."

It is almost a verbal amendment.

Mr. Vice-President : Do you want me to put amendment No. 580 to the vote?

Mr. Naziruddin Ahmad : Yes, sir.

Mr. Vice-President : Amendments Nos. 574, 581, 582 (second part), 587, 588 and 589 are of similar import and are to be considered together. Amendment No. 581 is allowed to be moved.

Mr. Naziruddin Ahmad : I am not moving it.

[Amendments Nos. 574, 582 (second part) and 587 were not moved.]

Mr. Tajamul Husain: Sir, I beg to move:

"That Explanation to clause (1) of article 19 be deleted and the following be inserted in that place:—

'No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognised.' "

Mr. Naziruddin Ahmad : On a point of order. Does the Honourable Member refer to invisible signs or marks or names? By banning visible signs, does he prefer invisible signs and marks? How can there be invisible names?

Mr. Vice-President: Do you like to say anything?

Mr. Tajamul Husain: I have not been able to follow my honourable Friend, Mr. Naziruddin Ahmad. He seeks clarification on the point as to how there could be invisible signs. My intention is that there should be no visible sign, or mark or name by which a person shall be recognised. You have a name "Pershad", by which you know a person is a 'Kayasth'. You have the name "Syed" by which you know that a person is a Muhammadan. My amendment may be badly worded but my friend Mr. Naziruddin only knows about commas, semi-colons and full-stops.

Mr. Vice-President : You need not dilate on it.

Mr. Tajamul Husain: I wish to point out that religion is a private affair between man and his God. It has no concern with anyone else in the world. What is the religion of others is also no concern of mine. Then why have visible signs by which one's religion may be recognised? You will find, Sir, that in all civilized countries—and civilized countries now-a-days are the countries in Europe and America—there is no visible sign or mark by which a man can be recognised as to what religion he professes. In this country unfortunately, you can find out a man's religion by his visible sign or mark. I need not dilate on this. I will only give the points. In civilized countries people have family names, namely, Disraeli or Birkenhead. From these names you cannot say that Disraeli was a Jew and Birkenhead was a Christian. If you hear the name of Lord Reading, you cannot say to what religion he belongs. There was a man in England whose name was Lovegrove. You cannot say to what religion he belongs, though I know he was a Muslim. There are many Christians in England who have become Muhammadans. So in those countries you cannot find out to what religion a man belongs simply by his name. In this country, of course, I have told you, Sir, from a person's name you can find out his religion. You hear of the name of Pershad. In my province it means a Kayasth. If you hear of Ojha or Jha you know that the person is a Brahmin. In Bengal you know that a person of the name of Mookerjee must be a Brahmin, and so forth. So I do not want these things. I know I am 100 years ahead of the present times. But still, I shall have my say.

In civilized countries in England there was a time when there was no uniformity of dress. In this country you find all sorts of dresses.

You find dhoties, you find pyjamas, you find kurtas, you find shirts,—and again, no shirts, no dhoties, nakedness, all sorts of things. That was the same thing in England at one time.

Maulana Hasrat Mohani: On a point of order,—whatever Mr. Tajamul Husain is suggesting, he must adopt it himself first. He must change his own name, because seeing his name one can say he is a Muslim.

Mr. Tajamul Husain: I am sorry for the interruption of the Maulana. My name I will change when the whole country adopts my resolution. Then, he will not be able to find out what I am and who I am.

Now, Sir, I was talking about dress. There was a time in England when there was no uniformity, but the Honourable the Law Minister will agree with me that an Act was actually passed in Parliament by which there was uniformity of dress and now in England and in the whole of Europe and in America there is uniformity of dress. We are one nation. Let us all have one kind of dress; one kind of name; and no visible signs. In conclusion, I say we are going to be a secular State. We should not, being a secular State, be recognised by our dress. If you have a particular kind of dress, you know at once that so and so is a Hindu or a Muslim. This thing should be done away with. With these words, I move my amendment.

(Amendments 589 and 583 were not moved.)

Prof. K. T. Shah: Mr. Vice-President, I beg to move—

"That the following proviso be added to clause (1) of article 19:

> "Provided that no propaganda in favour of any one religion, which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital or asylum, or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein.

Sir, the main article gives the right of freedom of propaganda. I have no quarrel with the right that anybody professing any particular form of belief should be at liberty, in this Liberal State, to place the benefits or beauties of his particular form of worship before others. My only condition—and the amendment tries to incorporate that—is that this freedom should not be abused, as it has been in the past. In places or institutions, where people of tender age or those suffering from any bodily or mental infirmity, are exposed to undue influence, they are liable to be influenced more by the personality of those in authority above them than by the inherent advantages and unquestionable reasoning in favour of a particular region, and as such result in conversion. That is not a genuine change of opinion, but is the result of undue influence that ought to be stopped.

I have no quarrel at all with those who would change their opinion after full and mature consideration of such material as may be available to them regarding the beliefs that they inherit from their parents. Most of the religious beliefs in this world are not,—may I say without any offence—a matter of reasoned conviction; they are an acquired habit or an inherited prejudice which may not stand the strain of conviction on the opposite side, or reasoning on the controverting side. Accordingly, anybody who desires the mind of the public to be alert free from prejudic and open to conviction, will not object to permitting such freedom of propaganda that may result in conversion.

I have no objection therefore to anybody speaking, writing, preaching, in any place of public resort, in any open space, in parks, gardens, theatres or any other public place, even to people of tender age or even to people of unsound mind or body; because in those places they are not suffering from any disability, nor are those who are teaching or preaching in those public places in a place of authority, in a place where they can exercise undue influence; and as such it can be presumed that it is rather the force of their argument, the strength of their reasoning that has resulted in proselytising without any undue influence, or unfair authority, upon those people. But when, as in a school or a college, in an hospital or asylum, those who are set in authority as teacher or preacher, physician, guardian or nurse, take advantage of their peculiar position to influence them, to place before them another way of looking at life and its purpose than that they have had from birth, then I think undue influence is exercised and as such objectionable.

Even that may be permitted so far as that particular Institution does not benefit in any way from public revenues, or is not aided, protected, or encouraged by any public authority in the Union or in any part of it. I hope the House realises the extreme moderation of my amendment, and the tightness of the restriction that I have put so far as this proviso is concerned, namely, that it will operate only on people in a place or institution where they are suffering from some kind of disability, whether of age or of unsound mind or body, and where, therefore, their change of belief if it is brought about would be open to suspicion.

That is one reason. Then again, the preaching or propaganda which may be objected to is by or from people who are set in authority above the young,

the helpless, disabled or of unsound mind, that is, as teacher or nurse or guardian. That is also a very substantial limitation.

Thirdly, the institutions or places carrying on propaganda of this kind resulting in conversion from one religion to another to which we object are places which are maintained wholly or partly by public revenues. They may be receiving financial grant; or they may be receiving recognition, which is perhaps more valuable than a direct money grant, and charging fees from the public, so that they may benefit even though nominally they may not be taking any grants from public revenues, or they may be aided or protected by any public authority.

With these three very substantial restrictions I am sure nobody would quarrel or object to my amendment, especially to the idea of propaganda of a kind which is calculated to change the religion or form of belief or worship inherited with one's parentage, if that propaganda is done by people in authority above them; and they in the meantime are suffering from some kind of disability of the type I have illustrated.

I know, Sir, this is liable to excite strong feeling. There are religions which are professedly proselytising. There are religions which leave the matter of religion to every person's own conscience, and do not indulge in proselytising. Whatever that be, without quarrelling with the freedom of preaching one's religion, I hold that it is the most moderate form of request to the professors or preachers of those religions, which want to proselytise, that they should at least observe this much self-restraint, *viz.,* that any institutions maintained by any form of public assistance or receiving any form of public encouragement should not be utilised by them for propaganda or proselytisation, so that the minds not quite free from other influences, minds suffering from some kind of handicap, shall not be unduly influenced.

Sir, I have tried to use no expression in the course of these few remarks which might give the slightest occasion for anybody to feel alarmed at the restraint which I am suggesting should be put upon their right to propagate religion. I have not quoted a single instance which may be found in plenty, where undue advantage has been taken to effect conversions in a manner which may be regarded as most reprehensible. Those who are blinded by their faith are welcome to their belief. But I would beg them to realise that in suggesting that those who are suffering from disabilities shall be free from activities of this kind, they will not misunderstand me when I say that I have not the slightest objection to their holding their beliefs and even propagating them but that they should not indulge in this illicit form for carrying on their religious activity.

Professing no particular religion myself, I can give an assurance to the House that I am not actuated by any feeling of partiality for one or opposition to another. I only wish that this may be left as a matter of purely personal concern. When you meet at a social gathering or congregational union this much decency should be observed that you shall not carry on your influence in an undue manner, but only rely upon the convincing character of your arguments. Sir, I commend the motion to the House.

The Honourable Shri Ghanshyam Singh Gupta: (C. P. and Berar: General): Sir, I move:

That in the Explanation to clause (1) of article 19, for the word 'profession', the word 'practice' be substituted.

Article 19. Sir, is very comprehensive. It says: "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion." Now, as to freedom of conscience: It means that a man is free either to have a religion or no religion. If a man has a religion, then

[The Honourable Shri Ghanshyam Singh Gupta]

he is free to profess whatever religion he likes, either Islam, or Hinduism, or Buddhism or Sikhism and so on. Then, professing that religion, he is free to practise the dictates of that religion. For instance, if Islam requires that there should be a namaz, a Muslim is free to practise it and also to propagate it. What I would humbly submit is this: The wearing of kirpan may more appropriately be called the practice of religion than the profession of the Sikh religion. This is all I have to say.

Mr. Vice-President : It seems that there is an amendment to this amendment. As I understand that it is not going to be moved, the next one that can be moved is only 591 standing in the name of Shri Lokanath Misra.

Shri Lokanath Misra: Mr. Vice-President, if you will permit me to speak on the general discussion of the article as a whole I would not move this amendment at all.

Mr. Vice-President : How can I guarantee that? I must observe a time table. Whether you get a chance or not will depend upon the shape the debate takes. You are at liberty to move this amendment.

Shri Lokanath Misra: I beg to move—

"That at the end of Explanation to clause (1) of article 19, the words 'and for the matter of that of any other religion' be inserted."

I would have been very glad if I had a chance to speak generally on article 19 and not move this amendment. To my mind, if article 13 of this Draft Constitution is a Charter for liberty, article 19 is a Charter for Hindu enslavement. I do really feel that this is the most disgraceful Article, the blackest part of the Draft Constitution. I beg to submit that I have considered and studied all the constitutional precedents and have not found anywhere any mention of the word 'propaganda' as a Fundamental Right, relating to religion.

Sir, We have declared the State to be a Secular State. For obvious and for good reasons we have so declared. Does it not mean that we have nothing to do with any religion? (You know that propagation of religion brought India into this unfortunate state and India had to be divided into Pakistan and India.) If Islam had not come to impose its will on this land, India would have been a perfectly secular State and a homogenous State. There would have been no question of Partition. Therefore, we have rightly tabooed religion. And now to say that as a fundamental right everybody has a right to propagate his religion is not right. Do we want to say that we want one religion other than Hinduism and that religion has not yet taken sufficient root in the soil of India and do we taboo all religions? Why do you make it a Secular State? The reason may be that religion is not necessary or it may be that religion is necessary, but as India has many religions, Hinduism, Christianity, Islam and Sikhism, we cannot decide which one to accept. Therefore let us have no religions. No. That cannot be. If you accept religion, you must accept Hinduism as it is practised by an overwhelming majority of the people of India.

Mr. Vice-President: We shall resume the discussion on Monday. A request has come to me from my Muslim brethren that as today is Friday we should now adjourn. I think we ought to show consideration to them an adjourn now to meet again on Monday at Ten of the clock.

Mr. Misra may then deliver the rest of his speech.

The House then adjourned till Ten of the Clock on Monday, the 6th December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 6th December 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Member took the Pledge and signed the Register:—

Shri K. Chengalaraya Reddy (Mysore).

DRAFT CONSTITUTION—(*Contd.*)

Article 19—*(Contd.)*

Mr. Vice-President (Dr. H. C. Mookherjee) : We shall now resume discussion on article 19.

Shri Lokanath Misra (Orissa: General) : Sir, it has been repeated to our ears that ours is a secular State. I accepted this secularism in the sense that our State shall remain unconcerned with religion, and I thought that the secular State of partitioned India was the maximum of generosity of a Hindu dominated territory for its non-Hindu population. I did not of course know what exactly this secularism meant and how far the State intends to cover the life and manners of our people. To my mind life cannot be compartmentalised and yet I reconciled myself to the new cry.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, are manuscripts allowed to be read in this House?

Mr. Vice-President : Ordinarily I do not allow manuscripts to be read, but if a Member feels that he cannot otherwise do full justice to the subject on hand, I allow him to read from his manuscript.

The Honourable Pandit Jawaharlal Nehru: May I know what is the subject?

Mr. Vice-President : Mr. Lokanath Misra is moving an amendment to article 19. I ask the indulgence of the House because Mr. Lokanath Misra represents a particular point of view which I hold should be given expression to in this House.

Shri Lokanath Misra: Gradually it seems to me that our 'secular State' is a slippery phrase, a device to by-pass the ancient culture of the land.

The absurdity of this position is now manifest in articles 19 to 22 of the Draft Constitution. Do we really believe that religion can be divorced from life, or is it our belief that in the midst of many religions we cannot decide which one to accept? If religion is beyond the ken of our State, let us clearly say so and delete all reference to rights relating to religion. If we find it necessary, let us be brave enough and say what it should be.

Shri S. Nagappa (Madras : General) : The honourable Member is reading so fast that we are not able to follow him.

Mr. Vice-President : Order, order.

Shri Lokanath Misra : But this unjust generosity of tabooing religion and yet making propagation of religion a fundamental right is some what uncanny and dangerous. Justice demands that the ancient faith and culture of the land should be given a fair deal, if not restored to its legitimate place after a thousand years of suppression.

[Shri Lokanath Misra]

We have no quarrel with Christ or Mohammad or what they saw and said. We have all respect for them. To my mind, Vedic culture excludes nothing. Every philosophy and culture has its place but now (the cry of religion is a dangerous cry.) It denominates, it divides and encamps people to warring ways. In the present context what can this word 'propagation' in article 19 mean? It can only mean paving the way for the complete annihilation of Hindu culture, the Hindu way of life and manners. Islam has declared its hostility to Hindu thought. Christianity has worked out the policy of peaceful penetration by the back-door on the outskirts of our social life. This is because Hinduism did not accept barricades for its protection. Hinduism is just an integrated vision and a philosophy of life and cosmos, expressed in organised society to live that philosophy in peace and amity. But Hindu generosity has been misused and politics has overrun Hindu culture. Today religion in India serves no higher purpose than collecting ignorance, poverty and ambition under a banner that flies for fanaticism. The aim is political, for in the modern world all is power-politics and the inner man is lost in the dust. Let everybody live as he thinks best but let him not try to swell his number to demand the spoils of political warfare. Let us not raise the question of communal minorities anymore. It is a device to swallow the majority in the long run. This is intolerable and unjust.

Indeed in no constitution of the world right to propagate religion is a fundamental right and justiciable. The Irish Free State Constitution recognises the special position of the faith professed by the great majority of the citizens. We in India are shy of such recognition. U.S.S.R. gives freedom of religious worship and freedom of anti-religious propaganda. Our Constitution gives the right even to propagate religion but does not give the right to any anti-religious propaganda.

If people should propagate their religion, let them do so. Only I crave, let not the Constitution put it as a fundamental right and encourage it. Fundamental rights are in alienable and once they are admitted, it will create bad blood. I therefore say, let us say nothing about rights relating to religion. Religion will take care of itself. Drop the word 'propagate' in article 19 at least. Civilisation is going headlong to the melting pot. Let us beware and try to survive.

Mr. Vice-President : There are two amendments in my list, *i.e.*, 592 and 593. They are of similar import and may be considered together. Of these two, amendment No. 593 standing in the name of Mr. Kamath is more comprehensive and I allow it to be moved.

Shri H. V. Kamath (C. P. & Berar : General): Mr. Vice-President, Sir, I move:—

That after clause (1) of article 19, the following new sub-clause be added:—

"(2) The State shall not establish, endow, or patronize any particular religion. Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union."

The amendment consists of two parts, the first relating to the disestablishment or the separation of what you may call in Western parlance the Church from the State, and the second relates to the deeper import of religion, namely, the eternal values of the spirit.

As regards the first part of the amendment, I need only observe that the history of Europe and of England during the middle ages, the bloody history of those ages bears witness to the pernicious effects that flowed from the union of Church and State. It is true enough that in India during the reign of Asoka, when the State identified itself with a particular religion, that is, Buddhism, there was no 'civil' strife, but you will have to remember that at that time in India, there was only one other religion and that was Hinduism. Personally,

I believe that because Asoka adopted Buddhism as the State religion, there developed some sort of internecine feud between the Hindus and Buddhists, which ultimately led to the overthrow and the banishment of Buddhism from India. Therefore, it is clear to my mind that If a State identifies itself with any particular religion, there will be rift within the State. After all, the State represents all the people, who live within its territories, and, therefore, it cannot afford to identify itself with the religion of any particular section of the population. But, Sir, let me not be misunderstood. When I say that a State should not identify itself with any particular religion, I do not mean to say that a State should be anti-religious or irreligious. We have certainly declared that India would be a secular State. But to my mind a secular state is neither a Godless State nor an irreligious nor an anti-religious State.

Now, Sir, coming to the real meaning of this word 'religion', I assert that 'Dharma' in the most comprehensive sense should be interpreted to mean the true values of religion or of the spirit. 'Dharma', which we have adopted in the crest or the seal of our Constituent Assembly and which you will find on the printed proceedings of our debates: धर्मचक्रप्रवर्तनाय ("Dharma Chakra pravartanaya")—that spirit, Sir, to my mind, should be inculcated in the citizens of the Indian Union. If honourable Members will care to go just outside this Assembly hall and look at the dome above, they will see a sloka in Sanskrit:

न सा सभा यत्र न सन्ति वृद्धा,
वृद्धा न ते ये न वदन्ति धर्मम्।

Na sa sabha yatra na santi vriddha,
Vriddha na te ye na vadanti dharmam."

That 'Dharma', Sir, must be our religion. 'Dharma' of which the poet has said.

येनैदं धार्यते जगत्

Yenedam dharyate jagat (that by which this world is supported.)

That, Sir, which is embodied which is incorporated in the great sutras, the Mahavakyas of our religions, in Sanskrit, in Hinduism, the Mahavakya 'Aham Brahma Asmi', then 'Anal Haq' in Sufism and 'I and my Father are one'—in the Christian religion—these doctrines, Sir, if they are inculcated and practised today, will lead to the cessation of strife in the world. It is these which India has got to take up and teach, not merely to her own citizens, but to the world. It is the only way out for the spiritual malaise, in which the world is caught today, because the House will agree, I am sure, with what has been said by the Maha Yogi, Sri Aurobindo, in one of his famous books, where he says:

"The master idea that has governed the life, the culture, social ideals of the Indian people has been the seeking of man for his true, spiritual self and the use of life as a frame and means for that discovery and for man's ascent from the ignorant natural into the spiritual existence."

I am happy, Sir, to see in this Assembly today our learned scholar and philosopher, Prof. Radhakrishnan. He has been telling the world during the last two or three years that the malaise, the sickness of this world is at bottom spiritual and therefore, our duty, our mission, India's mission comes into play.

If we have to make this disunited Nations—so called United, but really disunited nations—really United, if we have got to convert this Insecurity Council into a real Security Council, we have to go back to the values of the spirit, we have to go back to God in spirit and truth, and India has stood for these eternal values of the spirit from time immemorial.

Coming to the second part of the amendment, which reads: "Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union", I attach great importance to the same. India has stood through the ages for a certain system of spiritual discipline,

[Shri H. V. Kamath]

spiritual instruction, which has been known throughout the world by the name of "Yoga"; and Sri Aurobindo, the Maha Yogi, has said again and again, that the greatest need today is a transformation of consciousness, the upliftment of humanity to a higher level through the discipline of Yoga.

May I, Sir, by your leave, read what a Western writer, Arthur Koestler has written in one of his recent books called "Yogi or commissar"? "Yogi" stands for spirituality and "commissar" stands for materialism. In that book the writer observes: "Will mankind find a doctor or a dictator? Will he be yogi or commissar? The yogi does in order to be; the commissar, the capitalist, does in order to have; Western democracy needs more yogis"; that is the conclusion reached by this Western author.

Here, Sir, I would like to draw the attention of the House to the value and the importance that all our teachers, from time immemorial, from the Rishis and the Seers of the Upanishads down to Mahatma Gandhi and Netaji Subhas Chandra Bose have attached to spiritual training and spiritual instruction. Netaji Subhas Chandra Bose went to the length of prescribing spiritual training and spiritual instruction to the soldiers of the Azad Hind Fouj. In the curriculum, in the syllabus of the Azad Hind Fouj, this item of spiritual instruction was included. When I say, Sir, that the State shall not establish or endow or patronise any particular religion, I mean the formal religions of the world; I do not mean religion in the widest and in the deepest sense, and that meaning of religion as the highest value of the spirit, I have sought to incorporate in the second part of the amendment. That is, the State shall do all in its power to impart spiritual training and spiritual instruction to the citizens of the Union.

In the end, I would only say this. We are living in a war-torn, war-weary world, where the values of the spirit are at a low ebb, or at a discount. Nemesis has overtaken the world which has lost its spiritual value, and unless this world returns to the Spirit, to God in spirit and in truth, it is doomed. Sir, I commend my amendment to the acceptance of the House.

Mr. Vice-President : Amendment Nos. 594 and 595 are identical. I can allow amendment No. 595 to be moved.

(Amendments Nos. 595 and 594 were not moved.)

Mr. Vice-President : Amendment No. 596, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay: General): Sir, I beg to move:

"That in clause (2) of article 19, for the word "preclude" the word "prevent" be substituted."

This is only for the purpose of keeping symmetry in the language that we have used in the other articles.

Mr. Vice-President : There are a number of amendments to this amendment. The first is amendment No. 11 of list I, standing in the name of Pandit Thakur Dass Bhargava.

(Amendments Nos. 11 and 12 in list I were not moved.)

Amendment No. 13 standing in the name of Mr. Naziruddin Ahmad is disallowed. For the words "the State" he wants the words "any State" to be substituted.

(Amendments Nos. 597, 598, 599 and 600 were not moved.)

Amendment No. 601, Prof. K. T. Shah.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity" the words "regulating,

restricting or prohibiting any economic, financial, political or other secular activity' be substituted."

The clause as amended would read:

"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating, restricting or prohibiting any economic, financial, political or other secular activity which may be associated with religious practice....."

These are the words that I have ventured to add, and I think they are necessary. If the State has to have its supreme authority asserted as against, or in relation to, any Religion, which, merely in the name of religion, carries on practices of a secular kind whether it is financial, economic or political, it is necessary that those words be added and form part of the article.

I am not content with merely "regulating or restricting" them; I should like the State also to have the power positively and absolutely "to prohibit" any such practice. Such practices in my opinion, only degrade the very name of religion. Nothing has caused more the popular disfavour of some of the most well-known and most widely spread religions in the world than the association of those religions with secular activities, and with excesses that are connected with those activities. Material possession, worldly wealth and worldly grandeur are things which have been the doom of many an established Church. Many a well-known Religion, which has ceased to follow the original spirit or the precepts of its Founders, has, nevertheless, carried on, in the popular eye, business, trade, and political activity of a most reprehensible character. The State in India, if it claims to be secular, if it claims to have an open mind, should have, in my opinion, a right not merely to regulate and restrict such practices but also absolutely to prohibit them.

I do not wish to hurt anybody's feelings by citing specific examples of religious heads, or those claiming to be acting in the name of religion, carrying on a number of worldly activities of a most undersirable kind. They not only minister to the benefit or aggrandisement of the particular sect or class to which they belong, but, more often than not, they relate to the particular individual who for the moment claims to be the head or representative of that religion. The association of private property, the possession of material wealth, and the possibility of developing that wealth by trading, by speculation, by economic activity, which many of those carry on in the name of religion, or in virtue of their being heads of religion, are productive of evils of which perhaps the innocent Members of this House have no conception.

The facts are well-known, however, to those who have at all discerned in this matter not only that the heads of religions in the name of their religion claim exemption from income-tax out of the receipts of their own domain, but also right of any further gains that they may make by open or illic it trading, speculation, investments, or what not. I suggest that it is absolutely necessary and but right and proper, in the interests of the State, and more so in the interests of the general policy and principles on which the State is founded in India, that power be reserved in this Constitution absolutely to prohibit any such non-religious, non-spiritual activity, that in the name of religion, may be carried on, to the grave prejudice of the country as a whole, and even to the same religion of which they claim to be heads.

I have no desire as observed already, to cite illustrations. I know in advance the fate of my amendment, and, therefore, it is unnecessary for me to make the House wiser than it is by citing examples, and incurring for me the further displeasure of particular classes affected thereby.

Mr. Vice-President : Professor Shah—I cannot allow you to indulge in these remarks—I mean referring to the fate of your amendments and casting reflections on particular groups.

Prof. K. T. Shah: I was only trying to say that I know the fate of my amendments in advance; but I would not make it worse by citing examples, which might affect particular classes, and might incur for me their displeasure. If I have said anything improper I am sorry and I would apologize for it.

Mr. Vice-President : I did not say "improper". But it is bound to affect the calmness of the House and I would implore you.

Prof. K. T. Shah: Sir, I would obey all your commands and even if you put them in the name of request, I would treat them as commands. But with the experience that I have had of my amendments—however good they are I was entitled to say this. If you think otherwise, I will submit to your ruling and take my seat.

(Amendments Nos. 602 and 603 were not moved.)

Mr. Vice-President : Nos. 604, 605, 607 and 608 are similar. I allow 604 and 607 to be moved.

Mr. Vice-President : No. 607—Prof. K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move—

"That in sub-clause (b) of clause (2) of article 19, after the words "or throwing open Hindu" the words "Jain, Buddhist, or Christian" be added."

The clause as I suggest would read—

".....for social welfare and reform or for throwing open Hindu, Jain, Buddhist or Christian religious institutions of a public character to any class or section of Hindus."

Sir, I do not see why this right or obligation should be restricted only to Hindu Religious institutions to be thrown open to public. I think the intention of this clause would be served if it is more generalised, and made accessible or made applicable to all the leading religions of this country, whose religious institutions are more or less cognate, and who therefore may not see any violation of their religious freedom, or their religious exclusiveness, by having this clause about throwing open their places of worship to the public.

I think, Sir, that the freedom of religion being guaranteed by this Constitution, and promised as one of the Fundamental Rights, the possibility of all religious institutions being accessible and open for all communities is a very healthy sign, and would promote harmony and brotherhood amongst the peoples following various forms of beliefs in this country, and therefore I think, Sir, that this amendment at any rate should find acceptance from those who have sponsored this clause.

(Amendments Nos. 606 and 608 were not moved.)

Shrimati G. Durgabai (Madras : General): Mr. President, Sir, I beg to move the following amendment:—

"That in sub-clause (b) of clause (2) of article 19 for the words "any class or section" the words "all classes and sections" be substituted."

Sir, if my amendment is accepted, the clause would read thus:—

"That nothing in this article shall affect the operation of any existing law or preclude the State from making any law for social welfare and reform or for throwing open Hindu religious institutions of a public character to all classes and sections of Hindus."

Sir, the object of my amendment is to enlarge the scope of the clause as it stands. The clause as it stands, reads thus—

".....for social welfare and reform or for throwing open Hindu religious institutions of a public character to any class or section of Hindus."

Sir, in my view the clause as it stands is restricted in its scope, and the object of my amendment is to secure the benefit in a wider way and to make it applicable to all classes and sections.

Sir, though we are not able to make a sweeping reform or a more comprehensive reform in this direction, I feel that no distinction of any kind should be made between one class of Hindus and another.

Now, with regard to the Hindu religious institutions of a public character, we are all aware that there are various classes of these institutions, such as temples, religious maths, and educational institutions or Pathasalas conducted by these institutions, or attached to these institutions. So far as temples are concerned, I am sure that all of us are aware that almost all of the provinces, including some States, have already passed law throwing open temples to all classes or sections of Hindus. But I am equally sure that some distinction does still exist in regard to the other forms of religious institutions, such as Pathasalas, educational institutions and others managed or conducted by these religious institutions. As I have already explained, my object is to enlarge the scope of this clause, and to include within it all classes and sections of Hindus. If my amendment is accepted, then that object will be fulfilled. As I have already explained, there should not be any distinction between one class and another class of Hindus.

I think these few words will suffice to explain the object of my amendment. I commend my amendment to the House for its acceptance. Sir, I move.

Mr. Vice-President : Amendment No. 610 is disallowed because it has already been covered by something allied, under the Directive Principles.

(Amendment No. 611 was not moved.)

No. 612, standing in the joint names of Mr. Mohammed Ismail Sahib and Mr. Pocker Sahib.

The Honourable Shri K. Santhanam (Madras : General): Sir, on a point of order. This particular amendment No. 612 is not relevant to this article 19. The amendment refers to personal law, but here we are dealing only with freedom of religion. The matter touched by the amendment has already been raised in a previous article, and also in the Directive Principles.

Mohamed Ismail Sahib (Madras : Muslim): Sir, I beg to submit that my amendment is quite in order under this article, because this article speaks of the religious rights of the citizens, and personal law is based upon religion. I have made it quite clear on a previous occasion that personal law is part of the religion of the people who are observing that personal law. I only want to make it clear that this article shall not preclude people from observing their personal law. I am putting it in a negative form, because here, the article says—

"Nothing in this article shall affect the operation of any existing law or preclude the State from making any law—

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;"

This practice of personal law may, by a stretch of imagination, be brought under the secular activities associated with religion. Therefore, I propose to make it clear that so far as personal law is concerned, this article shall not affect the observance thereof by the people concerned. That is my point.

The Honourable Shri K. Santhanam: Sir, we have adopted a directive asking the State to endeavour to evolve a uniform civil code, and this particular amendment is a direct negation of that directive. On that ground also, I think, this is altogether inappropriate in this connection.

Mr. Vice-President : Would you like to say anything on this matter, Dr. Ambedkar? I should value your advice about this amendment being in order or not, on account of the reasons put forward by Mr. Santhanam.

The Honourable Dr. B. R. Ambedkar: I was discussing another amendment with Mr. Ranga here and so.....

The Honourable Shri K. Santhanam: Amendment No. 612 about personal law is sought to be moved.

The Honourable Dr. B. R. Ambedkar: This point was disposed of already, when we discussed the Directive Principles, and also when we discussed another amendment the other day.

Mr. Mohamed Ismail Sahib: On a previous occasion I put it in the positive form and here I put it in the negative form. So far as the Directive Principles are concerned, they speak of the attempts which the Government have to make in evolving a uniform civil code. Suppose they have exempted personal law, that does not mean that there can be no uniform civil code in the country. Whatever that may be, here I say under this article, in the matter of religion, people are given certain rights and this question of personal law shall not be brought in. That is what I say. The question of personal law shall not be affected when this article comes into operation. That is my point.

Mr. Vice-President : I do not know whether I am technically correct or not; but in view of the peculiar circumstances in which our Muslim brethren are placed, I am allowing Mr. Mohamed Ismail Sahib to say what he has to say and to place his views before the House.

Mr. Mohamed Ismail Sahib: Thank you very much, Sir, forgiving me another opportunity to put my views before the House on this very important matter. I beg to move:

"That after clause (2) of article 19, the following new clause be added:

'(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong.' "

Sir, this provision which I am suggesting would only recognise the age long right of the people to follow their own personal law, within the limits of their families and communities. This does not affect in any way the members of other communities. This does not encroach upon the rights of the members of other communities to follow their own personal law. It does not mean any sacrifice at all on the part of the members of any other community. Sir, here what we are concerned with is only the practice of the members of certain families coming under one community. It is a family practice and in such cases as succession, inheritance and disposal of properties by way of wakf and will, the personal law operates. It is only with such matters that we are concerned under personal law. In other matters, such as evidence, transfer of property, contracts and in innumerable other questions of this sort, the civil code will operate and will apply to every citizen of the land, to whatever community he may belong. Therefore, this will not in any way detract from the desirable amount of uniformity which the State may try to bring about, in the matter of the civil law.

This practice of following personal law has been there amongst the people for ages. What I want under this amendment is that that practice should not be disturbed now and I want only the continuance of a practice that has been going on among the people of ages past. On a previous occasion Dr. Ambedkar spoke about certain enactments concerning Muslim personal law, enactments relating to Wakf, Shariat law and Muslim marriage law. Here there was no question of the abrogation of the Muslim personal law at all. There was no revision at all and in all those cases what was done was that the Muslim personal law was elucidated and it was made clear that these laws shall apply to the Muslims. They did not modify them at all. Therefore those enactments and legislations cannot be cited now as matters of precedents for us to do anything contravening the personal law of the people. Under this amendment what I want the House to accept is that when we

speak of the State doing anything with reference to the secular aspect of religion, the question of the personal law shall not be brought in and it shall not be affected.

Sir, by way of general remarks I want to say a few words on this article. My friend Mr. Tajamul Husain brought forward certain amendments, Nos. 572 and 588. To tell you the truth, Sir, I did not know at that time nor do I know now whether he was serious at all when he made those proposals and what were the points which he urged in favour of his proposals I could not understand. I did not take him, and I make bold to say that the House also did not take him, seriously and therefore I do not want to waste the time of the House in replying to him.

The question of professing, practising and propagating one's faith is a right which the human being had from the very beginning of time and that has been recognised as an inalienable right of every human being, not only in this land but the whole world over and I think that nothing should be done to affect that right of man as a human being. That part of the article as it stands is properly worded and it should stand as it is. That is my view.

Another honourable Member spoke about the troubles that had arisen as a result of the propagation of religion. I would say that the troubles were not the result of the propagation of religion or the professing or practising of religion. They arose as a result of the misunderstanding of religion. My point of view, and I say that that is the correct point of view, is that if only people understand their respective religions aright and if they practise them aright in the proper manner there would be no trouble whatever; and because there was some trouble due to some cause it does not stand to reason that the fundamental right of a human being to practise and propagate his religion should be abrogated in any way.

Mr. Vice-President : The clause is now open for discussion.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Sir, I feel myself called upon to put in a few words to explain the general implications of this article so as to remove some of the misconceptions that have arisen in the minds of some of my honourable Friends over it.

This article 19 of the Draft Constitution confers on all persons the right to profess, practise and propagate any religion they like but this right has been circumscribed by certain conditions which the State would be free to impose in the interests of public morality, public order and public health and also in so far as the right conferred here does not conflict in any way with the other provisions elaborated under this part of the Constitution. Some of my Friends argued that this right ought not to be permitted in this Draft Constitution for the simple reason that we have declared time and again that this is going to be a secular State and as such practice of religion should not be permitted as a fundamental right. It has been further argued that by conferring the additional right to propagate a particular faith or religion the door is opened for all manner of troubles and conflicts which would eventually paralyse the normal life of the State. I would say at once that this conception of a secular State is wholly wrong. By secular State, as I understand it, is meant that the State is not going to make any discrimination whatsoever on the ground of religion or community against any person professing any particular form of religious faith. This means in essence that no particular religion in the State will receive any State patronage whatsoever. The State is not going to establish, patronise or endow any particular religion to the exclusion of or in preference to others and that no citizen in the State will have any preferential treatment or will be discriminated against simply on the ground that he professed a particular form of religion. In other words in the affairs of the State the professing of any particular religion will not be taken into consideration at all. This I consider to be the essence of a

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secular State. At the same time we must be very careful to see that this land of ours we do not deny to anybody the right not only to profess or practise but also to propagate any particular religion. Mr. Vice-President, this glorious land of ours is nothing if it does not stand for lofty religious and spiritual concepts and ideals. India would not be occupying any place of honour on this globe if she had not reached that spiritual height which she did in her glorious past. Therefore I feel that the Constitution has rightly provided for this not only as a right but also as a fundamental right. In the exercise of this fundamental right every community inhabiting this State professing any religion will have equal right and equal facilities to do whatever it likes in accordance with its religion provided it does not clash with the conditions laid down here.

The great Swami Vivekananda used to say that India is respected and revered all over the world because of her rich spiritual heritage. The western world, strong with all the strength of a materialistic civilisation, rich with the acquisitions of science, having a dominating position in the world, is poor today because of its utter lack of spiritual treasure. And here does India step in. India has to import this rich spiritual treasure, this message of hers to the west. If we are to do that, if we are to educate the world, if we are to remove the doubts and misconceptions and the colossal ignorance that prevails in the world about India's culture and heritage, this right must be inherent,—the right to profess and propagate her religious faith must be conceded.

I have listened to some of the speeches that have been made in connection with this article. It has been objected to and it has been said that the right to propagate should be taken away. One honourable Member suggested that if we conceded the right, the bloody upheaval which this country has witnessed of late would again recur with full vehemence in the near future. I do not at all share that pessimism of my honourable Friend. Apparently my honourable Friend has not given special consideration to the conditions that are imposed in this article. The power that this article imposes upon the State to intervene on certain occasions completely demolishes all chances of that kind of cataclysm which we have seen.

It has also been said, and I am very sorry that an observation was made by an honourable Member of considerable eminence and standing, that the Christian community in its proselytising zeal has sometimes transgressed its limits and has done acts which can never be justified. An instance of Bombay was cited in defence of his position.

Mr. Vice-President : I am afraid you are making a mistake there. No particular instance, so far as I remember, was cited.

Pandit Lakshmi Kanta Maitra: Anyway I believe that was at the back of his mind. I am sorry if I have not got at it correctly. I want to say that a good deal of injustice will be done to the great Christian community in India if we go away with that impression. The Indian Christian community happens to be the most in offensive community in the whole of India. That is my personal opinion and I have never known anybody contesting that proposition. This Indian Christian community, so far as I am aware, spend to the tune of nearly Rs. 2 crores every year for educational uplift, medical relief and for sanitation, public health and the rest of it. Look at the numerous educational institutions, dispensaries and hospitals they have been running so effectively and efficiently, catering to all classes and communities. If this vast amount of Rs. 2 crores were utilised by this Christian community for purposes of seeking converts, then the Indian Christian community which comprises only 70 millions would have gone up to.....

Mr. Vice-President : You are mistaken there: it is only 7 millions.

Pandit Lakshmi Kanta Maitra: I beg your pardon. From 7 millions it would have gone to 70 millions. But the point, Mr. Vice-President, is not in the figures. The point of my whole contention is that the Christian community in India has not done that proselytising work with that amount of zeal and frenzy with which some of our friends have associated it. I am anxious to remove that mis-conception. Sir, I feel that every single community in India should be given this right to propagate its own religion. Even in a secular state I believe there is necessity for religion. We are passing through an era of absolute irreligion. Why is there so much vice or corruption in every stratum of society. Because we have forgotten the sense of values of things which our forefathers had inculcated. We do not at all care in these days, for all these glorious traditions of ours with the result that everybody now acts in his own way, and justice, fairness, good sense and honesty have all gone to the wilderness. If we are to restore our sense of values which we have held dear, it is of the utmost importance that we should be able to propagate what we honestly feel and believe in. Propagation does not necessarily mean seeking converts by force of arms, by the sword, or by coercion. But why should obstacles stand in the way if by exposition, illustration and persuasion you could convey your own religious faith to others? I do not see any harm in it. And I do feel that this would be the very essence of our fundamental right the right to profess and practise any particular religion. Therefore this right should not be taken away, in my opinion. If in this country the different religious faiths would go on expounding their religious tenets and doctrines, then probably a good deal of misconception prevailing in the minds of people about different religions would be removed, and probably a stage would be reached when by mutual understanding we could avoid in future all manner of conflicts that arise in the name of religion. From that point of view I am convinced that the word 'propagate' should be there and should not be deleted.

In this connection I think I may remind the House that the whole matter was discussed in the Advisory Council and it was passed there. As such I do not see any reason why we should now go back on that. Sir, the clause as it is has my whole-hearted support, and I feel that with the amendments moved by my honourable Friend Dr. Ambedkar and Shrimati Durgabai this clause should stand as part of the Constitution.

Shri L. Krishnaswami Bharathi (Madras : General): Mr. Vice-President, after the eloquent and elaborate speech of my respected Friend Pandit Maitra I thought it was quite unnecessary on my part to participate in the discussion. I fully agree with him that the word 'propagate' ought to be there. After all, it should not be understood that it is only for any sectarian religion. It is generally understood that the word 'propagate' is intended only for the Christian community. But I think it is absolutely necessary, in the present context of circumstances, that we must educate our people on religious tenets and doctrines. So far as my experience goes, the Christian community have not transgressed their limits of legitimate propagation of religious view, and on the whole they have done very well indeed. It is for other communities to emulate them and propagate their own religions as well. This word is generally understood as if it referred to only one particular religion, namely, Christianity alone. As we read this clause, it is a right given to all sectional religions; and it is well known that after all, all religions have one objective and if it is properly understood by the masses, they will come to know that all religions are one and the same. It is all God, though under different names. Therefore this word ought to be there. This right ought to there. The different communities may well carry on propaganda or propagate their religion and what it stands for. It is not to be understood that when one

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propagate his religion he should cry down other religions. It is not the spirit of any religion to cry down another religion. Therefore this is absolutely necessary and essential.

Again, it is not at all inconsistent with the secular nature of the State. After all, the State does not interfere with it. Religion will be there. It is a personal affair and the State as such does not side with one religion or another. It tolerates all religions. Its citizens have their own religion and its communities have their own religions. And I have no doubt, whatever, seeing from past history, that there will not be any quarrel on this account. It was only yesterday His Excellency the Governor-General Sri Rajaji spoke on this matter. It is very necessary that we should show tolerance. That is the spirit of all religions. To say that some religious people should not do propaganda or propagate their views is to show intolerance on our part.

Let me also, in this connection, remind the House that the matter was thoroughly discussed at all stages in the Minorities Committee, and they came to the conclusion that this great Christian community which is willing and ready to assimilate itself with the general community, which does not want reservation or other special privileges should be allowed to propagate its religion along with other religious communities in India.

Sir, on this occasion I may also mention that you, Mr. Vice-President, are willing to give up reservation of seats in the Assembly and the local Legislatures of Madras and Bombay, and have been good enough to give notice of an amendment to delete the clause giving reservation to the Christian community. That is the way in which this community, which has been thoroughly nationalist in its outlook, has been moving. Therefore, in good grace, the majority community should allow this privilege for the minority communities and have it for themselves as well. I think I can speak on this point with a certain amount of assurance that the majority community is perfectly willing to allow this right. I am therefore strongly in favour of the retention of the word 'propagate' in this clause.

The Honourable Shri K. Santhanam: Mr. Vice-President, Sir, I stand here to support this article. This article has to be read with article 13, article 13 has already assured freedom of speech and expression and the right to form association or unions. The above rights include the right of religious speech and expression and the right to form religious association or unions. Therefore, article 19 is really not so much an article on religious freedom, but an article on, what I may call religious toleration. It is not so much the words "All persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion" that are important. What are important are the governing words with which the article begins, *viz.*, "Subject to public order, morality and health".

Hitherto it was thought in this country that anything in the name of religion must have the right to unrestricted practice and propagation. But we are now in the new Constitution restricting the right only to that right which is consistent with public order, morality and health. The full implications of this qualification are not easy to discover. Naturally, they will grow with the growing social and moral conscience of the people. For instance, I do not know if for a considerable period of time the people of India will think that purdah is consistent with the health of the people. Similarly, there are many institutions of Hindu religion which the future conscience of the Hindu community will consider as in consistent with morality.

Sir, some discussion has taken place on the word 'propagate'. After all, propagation is merely freedom of expression. I would like to point out that the word 'convert' is not there. Mass conversion was a part of the activities of the Christian Missionaries in this country and great objection has been taken

by the people to that. Those who drafted this Constitution have taken care to see that no unlimited right of conversion has been given. People have freedom of conscience and, if any man is converted voluntarily owing to freedom of conscience, then well and good. No restrictions can be placed against it. But if any attempt is made by one religious community or another to have mass conversions through undue influence either by money or by pressure or by other means, the State has every right to regulate such activity. Therefore I submit to you that this article, as it is, is not so much an article ensuring freedom, but toleration—toleration for all, irrespective of the religious practice or profession. And this toleration is subject to public order, morality and health.

Therefore this article has been very carefully drafted and the exceptions and qualifications are as important as the right it confers. Therefore I think the article as it stands is entitled to our wholehearted support.

Shri Rohini Kumar Chaudhari (Assam : General): Sir, I am grateful to you for giving me this opportunity for making a few observations on this very important article. It struck me as very peculiar that, although as many as four articles have dealt with religion, there is no mention of God any where in the whole Chapter. At first I considered it extremely strange, but after going through the matter more carefully, I found every justification for it. From the way in which the world is progressing, there is very little doubt that a time will come when we may be in a position to dispense with God altogether. That has happened in other more advanced countries and therefore I believe, in order to make room for such a state of things, the word "God" has been purposely avoided in dealing with religion itself.

It reminds me of a story, Sir, which I had heard in my student life. There was a great scientist who presented to the king something like a globe in which the whole solar system, the sun, moon and everything, was shown. Then the king who had some faith in God asked the scientist, "Where have you placed God?". The scientist said, "I have done without him". That is exactly the position today. We are framing a Constitution where we speak of religion but there is no mention of God anywhere in the whole chapter. Sir, my honourable Friend Mr. Kamath introduced 'God' in his speech but at the same time he spoke about spiritual matters. The term "Spiritual training" is somewhat ambiguous. The word "spirit" is defined in the Chambers Dictionary as a 'ghost'. There are people in this world who do not fear God but they fear ghosts all the same because ghosts bring troubles while God does not. The term 'spiritual training' is very difficult for me to follow. What did my honourable Friend, Mr. Kamath, mean by spiritual training? What is the spiritual training to which he is referring? Is it training to believe in ghosts or to avoid them or is it the training to have more recourse to spirit to keep up your spirits in the evening. What actually he meant by spiritual training is very difficult to follow. Does he mean the teaching of the great books like the Bible, the Koran and the Gita in all institutions and that the State should be in a position to endow any institution which is dealing only with the teaching of the Koran, or the Bible or the Gita? I do not think that that is the aim. That point ought to be made clear.

Another point is the propagation of religion. I have no objection to the propagation of any religion. If anyone thinks that his religion is something ennobling and that it is his duty to ask others to follow that religion, he is welcome to do so. But what I would object to is that there is no provision in this Constitution to prevent the so-called propagandist of his religion from throwing mud at some other religion. For instance, Sir, in the past were member how missionaries went round the country and described Sri Krishna in the most abominable terms. They would bring up particular activities of Sri Krishna and say, "Look here, this is your Lord Krishna and this is his conduct". We also remember with great pain how they used to decry the worship

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of the idols and call them names. Sir, in the new Constitution we must make it perfectly clear that no such thing will be tolerated. It is not necessary in the course of propagating any particular religion to throw mud at other religions, to decry them and bring out their unsatisfactory features according to the particular supporters of a particular religion. There should be a provision in the law, in the Constitution itself that such conduct will be met with exemplary punishment. With these words, Sir, I support the amendment subject to such verbal alterations as have been suggested by Shrimati Durgabai and the Honourable Dr. Ambedkar.

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, I am here to support the motion before the House, *viz.*, to approve of article 19. Many speakers before me have emphasised the various provisions of this particular article and the background in regard to the framing of this article. What I would like to stress in this: Sir, we are not concerned here with compromises arrived at between the various communities. We are not really concerned with whether some advantage might be derived from the wording of this article later on by certain communities in regard to the furtherance of their own religious beliefs and practices, but I think emphasis should be laid on the fact that a new government and the new Constitution have to take things as they are, and unless the *status quo* has something which offends all ideas of decency, all ideas of equity and all ideas of justice, its continuance has to be provided for in the Constitution so that people who are coming under the regime of a new government may feel that the change is not a change for the worse. In achieving that particular object, I think this article has gone a long way.

Sir, objection has been taken to the inclusion of the word "propagate" along with the words "profess and practise" in the matter of religion. Sir, it does not mean that this right to propagate one's religion is given to any particular community or to people who follow any particular religion. It is perfectly open to the Hindus and the Arya Samajists to carry on their Suddhi propaganda as it is open to the Christians, the Muslims, the Jains and the Buddhists and to every other religionist, so long as he does it subject to public order, morality and the other conditions that have to be observed in any civilised government. So, it is not a question of taking away anybody's rights. It is a question of conferring these rights on all the citizens and seeing that these rights are exercised in a manner which will not upset the economy of the country, which will not create disorder and which will not create undue conflict in the minds of the people. That, I feel, is the point that has to be stressed in regard to this particular article. Sir, I know as a person who has studied for about fourteen years in Christian institutions that no attempt had been made to convert me from my own faith and to practise Christianity. I am very well aware of the influences that Christianity has brought to bear upon our own ideals and our own outlook, and I am not prepared to say here that they should be prevented from propagating their religion. I would ask the House to look at the facts so far as the history of this type of conversion is concerned. It depends upon the way in which certain religionists and certain communities treat their less fortunate brethren. The fact that many people in this country have embraced Christianity is due partly to the status that it gave to them. Why should we forget that particular fact? An untouchable who became a Christian became an equal in every matter along with the high-caste Hindu, and if we remove the need to obtain that particular advantage that he might probably get—it is undoubtedly a very important advantage, apart from the fact that he has faith in the religion itself—well, the incentive for anybody to become a Christian will not probably exist. I have no doubt, Sir, we have come to a stage when it does not matter to what religion a man belongs, it does not matter to what sub-sect or community in a particular religion a man belongs, he will be equal

in the eyes of law and in society and in regard to the exercise of all rights that are given to those who are more fortunately placed. So I feel that any undue influence that might be brought to bear on people to change their religion or any other extraneous consideration for discarding their own faith in any particular religion and accepting another faith will no longer exist; and in the circumstances, I think it is only fair that we should take the *status quo* as it is in regard to religion and put it into our Fundamental Rights, giving the same right to every religionist, as I said before, to propagate his religion and to convert people, if he felt that it is a thing that he has to do and that is a thing for which he has been born and that is his duty towards his God and his community.

Subject to the overriding considerations of the maintenance of the integrity of the State and the well-being of the people,—these conditions are satisfied by this article—I feel that if the followers of any religion want to subtract from the concessions given herein in any way, they are not only doing injustice to the possibility of integration of all communities into one nation in the future but also doing injustice to their own religion and to their own community. Sir, I support the article as it is.

Shri K. M. Munshi (Bombay : General): Mr. Vice-President, Sir, I have only a few submissions to make to the House. As regards amendment No. 607, moved by my honourable Friend, Prof. K. T. Shah, I entirely agree with him that the word 'Hindu' used in this section should be widely defined. As a matter of fact, the Hindu Bill which is now before this House in its legislative capacity has defined 'Hindu' so as to include the various sub-sections, but it will be more appropriate to have this definition in the interpretation clause than in this.

I have only a few words to say with regard to the objections taken to the word "propagate". Many honourable Members have spoken before me placing the point of view that they need not be afraid of the word "propagate" in this particular article. When we object to this word, we think in terms of the old regime. In the old regime, the Christian missionaries, particularly those who were British were at an advantage. But since 1938, I know, in my part of Bombay, the influence which was derived from their political influence and power has disappeared. If I may mention a fact within my knowledge in 1937 when the first Congress Ministry came into power in Bombay, the Christian missionaries who till then had great influence with the Collectors of the Districts and through their influence acquired converts, lost it and since then whatever conversions take place in that part of the country are only the result or persuasion and not because of material advantages offered to them. In the present set up that we are now creating under this Constitution, there is a secular State. There is no particular advantage to a member of one community over another; nor is there any political advantage by increasing one's fold. In those circumstances, the word 'propagate' cannot possibly have dangerous implications, which some of the Members think that it has.

Moreover, I was a party from the very beginning to the compromise with the minorities, which ultimately led to many of these clauses being inserted in the Constitution and I know it was on this word that the Indian Christian community laid the greatest emphasis, not because they wanted to convert people aggressively, but because the word "propagate" was a fundamental part of their tenet. Even If the word was not there, I am sure, under the freedom of speech which the Constitution guarantees it will be open to any religious community to persuade other people to join their faith. So long as religion is religion, conversion by free exercise of the conscience has to be recognised. The word 'propagate' in this clause is nothing very much out of the way as some people think, not is it fraught with dangerous consequences.

Speaking frankly, whatever its results we ought to respect the compromise. The Minorities Committee the year before the last performed a great achievement by having a unanimous vote on almost every provision of its report.

[Shri K. M. Munshi]

This unanimity created an atmosphere of harmony and confidence in the majority community. Therefore, the word 'propagate' should be maintained in this article in order that the compromise so laudably achieved by the Minority Committee should not be disturbed. That is all that I want to submit.

Mr. Vice-President : I have on my list here 15 amendments, most of which have been moved before the House. I should think that they give the views on this particular article from different angles. We had about seven or eight speakers giving utterance to their views. I think that the article has been sufficiently debated. I call upon Dr. Ambedkar to reply.

The Honourable Dr. Ambedkar: Mr. Vice-President, Sir, I have nothing to add to the various speakers who have spoken in support of this article. What I have to say is that the only amendment I am prepared to accept is amendment No. 609.

Shri H. V. Kamath: May I ask whether it will be enough if Dr. Ambedkar says: "I oppose; I have nothing to say." I should think that in fairness to the House, he should reply to the points raised in the amendments and during the debate.

Mr. Vice-President : I am afraid we cannot compel Dr. Ambedkar to give reasons for rejecting the various amendments.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, may I say that amendment No. 609 which has been accepted by the Honourable Dr. Ambedkar is a mere verbal amendment?

Mr. Vice-President : It will be recorded in the proceedings. We shall now consider the amendments one by one.

The question is:

"That in clause (1) of article 19, for the words 'practice and propagate religion' the words 'and practise religion privately' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 19, for the words 'practise and propagate' the words 'and practise' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 19, for the words 'are equally entitled to freedom of conscience and the right', the words 'shall have the right' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 19, the words 'freedom of conscience and' be omitted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That Explanation to clause (1) of article 19 be deleted and the following be inserted in that place:—

"No person shall have any visible sign or mark or name, and no person shall wear any dress whereby his religion may be recognised."

The amendment was negatived.

Mr. Vice-President : The question is:

"That the following proviso be added to clause (1) of article 19:—

"Provided that no propaganda in favour of any one religion which is calculated to result in change of faith by the individuals affected, shall be allowed in any school or college or other educational institution, in any hospital asylum or in any other place or institution where persons of a tender age, or of unsound mind or body are liable to be exposed to undue influence from their teachers, nurses or physicians, keepers or guardians or any other person

set in authority above them, and which is maintained wholly or partially from public revenues, or is in any way aided or protected by the Government of the Union, or of any State or public authority therein."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in the Explanation to clause (1) of article 19, for the word 'progession' the word 'practice' be substituted."

The Honourable Shri Ghanshyam Singh Gupta : (C. P. & Berar : General): Sir, I wish to withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The question is:

"That at the end of Explanation to clause (1) of article 19, the words 'and for the matter of that any other religion' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That after clause (1) of article 19, the following new sub-clause be added:—

"(2) The State shall not establish, endow or patronize any particular religion. Nothing shall however prevent the State from imparting spiritual training or instruction to the citizens of the Union."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in article 19, the following be inserted as clause (1a):—

"(1a) The Indian Republic shall make no law respecting an establishment of religion or prohibiting the free exercise thereof."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (2) of article 19, for the word "preclude" the word "prevent" be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (2) of article 19, for the words "regulating or restricting any economic, financial, political or other secular activity" the words "regulating, restricting or prohibiting any economic, financial, political or other secular activity" be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (2) of article 19, after the words 'or throwing open to Hindu' the words 'Jain, Buddhist or Christian' be added."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (2) of article 19 for the words "any class or section" the words 'all classes and sections' be substituted."

Have you accepted it, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar : Yes, Sir.

Mr. Vice-President : The amendment has been accepted by Dr. Ambedkar.

The amendment was adopted.

Mr. Vice-President : The question is:

"That after clause 2, of article 19, the following new clause be added:—

'(3) Nothing in clause (2) of this article shall affect the right of any citizen to follow the personal law of the group or the community to which he belongs or professes to belong'."

The amendment was negatived.

Mr. Vice-President : I shall now put article 19, as amended by amendment numbers 596 and 609 to vote. The question is:

"That article 19, as amended, form part of the Consitution."

The motion was adopted.

Article 19, as amended, was added to the Constitution.

Article 14—*(Contd.)*

Mr. Vice-President : We shall go back to Article 14. So far as I remember —I am sorry I have mislaid my notes—in article 14 there were a number of amendments which were put to the vote one after the other, and that only two amendments were being considered, when, for reasons already known to the House, we postponed their consideration. One was amendment No. 512 moved by Kazi Syed Karimuddin, and the other was a suggestion—am I right in saying that it was a suggestion made by Mr. T. T. Krishnamachari? Mr. T. T. Krishnamachari, will you please enlighten me? Was it a suggestion or was it a short notice amendment?

Shri T. T. Krishnamachari: It was a short notice amendment.

Mr. Vice-President : It was a short notice amendment admitted by me. These two only remained to be put to the vote.

Mr. Naziruddin Ahmad : With regard to amendment No. 512 I have a point of order, Mr. Vice-President.

You will be pleased to remember, Sir, that amendment No. 512 was moved in the House. It was accepted by Dr. Ambedkar and then it was put to the vote. The shouts according to your estimate were in favour of its acceptance. Then some trouble a rose and then shouts were again called. The shouts according to your estimate were again in favour of the amendment. What is very important in this connection, Sir, is that you declared the amendment to be carried.

Mr. Vice-President : Did I declare the amendment to be carried?

Mr. Naziruddin Ahmad: Yes, Sir. I remember.

Mr. Vice-President : Do the records show that?

Mr. Naziruddin Ahmad : The shorthand notes may be referred to. My recollection is it was declared carried (*Interruption*).

Mr. Vice-President : Kindly, in order to preserve the diginity of the House, do not interrupt Mr. Naziruddin Ahmad only because he is putting forward a point of view which may not be agreeable to a certain section of the House.

(To Mr. Naziruddin Ahmed) Kindly confine your remarks to the business on hand.

Mr. Naziruddin Ahmad: Sir, I do not wish to obstruct the majority in dealing with this amendment in any way they please. I simply suggest that if it is carried, it cannot be put again. It is against the Rules. But I have a way out, which I shall suggest and which will be constitutional. There is a rule, in our Rules, that with the consent of twenty five per cent of the Members of the House, any resolution that has been carried may be re-opened. I suggest, Sir, that if I am right that it was declared to be carried, then, it should be re-opened in the regular constitutional manner.

Mr. Vice-President : The official records of the deliberations read this way:

"Just before the voting was called, however, Shri Mahavir Tyagi made a suggestion, which was later supported by the Prime Minister, that the voting on this particular amendment be postponed as there appeared to be some confusion as to the full implications of this provision. The House agreed to the suggestion and voting on this amendment and on the article as a whole was accordingly postponed."

That shows that your whole objection falls to the ground.

(Mr. Naziruddin Ahmad rose to speak.)

Please do not argue.

I want to make certain other things clear to the House. I want to make clear the point of view from which I regard this. As I have said already, the House is the ultimate authority in this as in all matters. The House has laid down certain Rules for the conduct of the business. These Rules have been laid down mainly because the aim of the House is that the work should proceed smoothly. The smooth working of the House I regard as the really essential thing, and much more important than sticking to the Rules which the House has made and which the House can un-make at any time. When there was this confusion, to use the language of Mr. Naziruddin Ahmad, I made a reference to the House and the House agreed that the matter should be reconsidered. The House is fully competent to do so and if the House is still of that view, then the matter will be considered here and now.

Maulana Hasrat Mohani : (United Provinces : Muslim): May I know, Sir, whether the House has reconsidered or whether it is a mandate from the Congress Party who has issued a whip that it should be opposed? Do you decide to allow the House to reconsider or is it only a mandate from the Congress Party? I have got a copy of that whip in my hand, that this must be opposed.

Shri Mahavir Tyagi : (United Provinces : General): Sir, I protest against the language used and the honourable Member's referring to the whip of the Congress Party.

Mr. Vice-President : You have done your duty as a Congress man; now I shall do my duty as the presiding officer here.

Maulana Hasrat Mohani : Sir, I stick to what I have said.

Mr. Vice-President : I am sorry.....

Shri Mahavir Tyagi : Will you please ask him to give back the whip, which the honourable Member has no right to handle?

Mr. Vice-President : You are always the stormy petrel. While I am trying to bring peace and good humour you are interfering. I will not allow you to do so again.

As I was saying, I am very sorry that an old and experienced public man like Maulana Hasrat Mohani should have permitted himself to make references to things which are no concern of this House. As I have said more than once, though I belong to a particular political party, so long as I am in the Chair, I recognise no party at all. It is in that spirit that proceedings of this House are being conducted. I regret very much that anything should have been said challenging the way in which the proceedings have been conducted or are going to be conducted.

I ask the permission of the House once again as to whether I can re-open the matter.

Honourable Members: Yes.

Mr. Vice-President : Thank you. I am going to put amendment No. 512 to the vote.

The Honourable Shri Ghanshyam Singh Gupta: Sir, there is no question of re-opening. You had not finally said that the amendment was carried or was not carried. I want to impress upon the House that the Chair had not declared that it was either carried or it was not carried and therefore there is no question of re-opening at all. The matter is absolutely in the discretion of the Chair now. The Rules are quite clear. A vote is taken. Once it is challenged, the division bell rings. After the division bell

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rings, the Chair again puts it to the vote and then sends Ayes and Noes to the lobbies. The Teller counts the votes and after that, it is declared that a certain motion is lost or is carried. This was not done at all. In fact, it was in the process of declaration by the Chair that the motion is or is not carried that the Chair was pleased to say that this thing stands over. Anybody who says that the Chair finally declared that that motion was carried or lost is wrong.

Mr. Vice-President: It merely shows the depth of my ignorance. I used the word which should not have been used. I used the word 'reopen'. I am glad that the matter has been set right. I only wish that I had sufficient—what shall I say—ability to act in the way in which the Honourable Mr. Gupta has done. I now put amendment No. 512 to vote.

The question is:

'That in article 14, the following be added as clause (4):—

"(4) The right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures shall not be violated and no warrants shall issue but upon probables cause supported by oath or affirmation and particularly describing the place to be searched and the persons or things to be seized.' "

The amendment was negatived.

Mr. Vice-President : We come to Mr. Krishnamachari's amendment which was accepted by Dr. Ambedkar.

Shri H. V. Kamath: Is it necessary to say that Dr. Ambedkar has accepted or rejected every time?

Mr. Vice-President : Sometimes it is necessary. Not always. I now put the amendment to vote.

The question is:

"That in clause 2 of article 14 after the word 'shall be' the words 'prosecuted and' be inserted."

The amendment was adopted.

Mr. Vice-President : Now the question is:

"That article 14, as amended, stand part of the Constitution."

The motion was adopted.

Article 14, as amended was added to the Constitution.

Article 15

Mr. Vice-President : Now the motion before the House is: that article 15 form part of the Constitution.

We shall go over the amendments one after another. 515 is ruled out of order. Nos. 516, 517, 518 and 532 are similar and of these I can allow 516 to be moved as also 517 both standing in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad: (Bihar : General): Sir, I am not moving 516 and 517.

(Amendments Nos. 518, 532, 519 and 520 were not moved.)

Mr. Vice-President : No. 521 is blocked. Then 522, 523, 524, 525, 528 and 530 are similar. I can allow 523 to be moved.

Kazi Syed Karimuddin (C.P. & Berar: Muslim): Mr. Vice-President, Sir, if the proposed amendment by the Drafting Committee is accepted and the article is allowed to stand as it is:—

"No person shall be deprived of his life or personal liberty except according to procedure established by law.....".

then in my opinion, it will open a sad chapter in the history of constitutional law. Sir, the Advisory Committee on Fundamental Rights appointed by the Constituent Assembly had suggested that no person shall be deprived of his life or liberty without due process of law; and I really do not understand how the

words "personal" and "according to procedure established by law" have been brought into article 15 by the Drafting Committee.

Shri Lakshmi Kanta Maitra: Sir, is the honourable Member moving his amendment or not?

Mr. Vice-President : In order to meet the requirements of technicalities, please move your amendment first.

Kazi Syed Karimuddin: Sir, I beg to move—

"That in article 15, for the words "No person shall be deprived of his life or personal liberty except according to procedure established by law" the words "No person shall be deprived of his life or liberty without due process of law" be substituted."

Continuing my arguments Sir, if the words "according to procedure established by law" are enacted, there will be very great injustice to the law courts in the country, because as soon as a procedure according to law is complied with by a court, there will be an end to the duties of the court and if the court is satisfied that the procedure has been complied with, then the judges cannot interfere with any law which might have been capricious, unjust or iniquitous. The clause, as it stands, can do great mischief in a country which is the storm centre of political parties and where discipline is unknown. Sir, let us guarantee to individuals inalienable rights in such a way that the political parties that come into power cannot extend their jurisdiction in curtailing and invading the Fundamental Rights laid down in this Constitution.

Sir, there is an instance in the American Constitutional law in a case reported, Chambers *Vs.* Florida where an act was challenged in a court of law on the ground that the law was not sound and that it was capricious and unjust. Therefore, my submission is that if the words "according to procedure established by law" are kept then it will not be open to the courts to look into the injustice of a law or into a capricious provision in a law. As soon as the procedure is complied with, there will be an end to everything and the judges will be only spectators. Therefore, my submission is, first, that the words, "except according to procedure established by law" be deleted, and then that the words "without due process of law" be inserted.

Sir, actually I had sent two amendments, one about the word "personal" before the words 'liberty', and the other about substitution of the words "without due process of law" for the words "except according to procedure established by law". But somehow or other, these two amendments have been consolidated, and I am required to move one amendment. Even if my amendment about "personal liberty" is not accepted by the Drafting Committee or Dr. Ambedkar, I do not mind; but the second portion of my amendment should be accepted.

(Amendment No. 524 was not moved.)

Mr. Vice-President : Amendment No. 525. Mr. Naziruddin Ahmad. Do you want to press it?

Mr. Naziruddin Ahmad : Sir, there is a printing mistake which I want to point out.

Mr. Vice-President : All right. Then we come to No. 528 standing in the names of Shri Upendranath Barman, Shri Damodar Swarup Seth and Shri S. V. Krishnamurthy Rao.

Kazi Syed Karimuddin : Sir, I have to raise a point of order here. I said in my speech that I have tabled two separate amendments, one regarding the word 'personal' and the other regarding 'due process of law'. Both these amendments have been consolidated by mistake of the Secretariat. So I have had to move the second part of my amendment. But then, according to the list supplied to us, No. 528 has been bracketted with No. 523—that is my

[Kazi Syed Karimuddin]

amendment. I have moved mine, and so No. 528 cannot be moved now, but only put to vote, according to the practice followed in this House.

Mr. Vice-President : All right. We need not move No. 528.

Shri S. V. Krishnamurthy Rao (Mysore): But there is a difference, in that in No. 528 there is no reference to the word 'personal', whereas No. 523 refers to deletion of this word.

Mr. Vice-President : But they are of similar importance and I have already given my decision. We shall put No. 528 to vote.

Then No. 530 in the name of Mr. Z. H. Lari. Do you want it to be put to the vote?

Mr. Z. H. Lari: (United Provinces: Muslim): Yes, Sir.

Mr. Vice-President : Then in my list come No. 524, second part, No. 526 and No. 527. These are almost the same. No. 526 may be moved.

Mahboob Ali Baig Sahib Bahadur (Madras : General): Sir, I beg to move:

"That in article 15 for the words "except according to procedure established by law" the words, "save in accordance with law" be substituted."

In the note given by the Drafting Committee, it is stated that they made two changes from the proposition or article passed by this Assembly in the month of August, April or May of 1947. The first is the insertion of the word 'personal' before liberty, and the reason given is that unless this word 'personal' finds a place there, the clause may be construed very widely so as to include even the freedoms already dealt with in article 13.

That is the reason given for the addition of the word 'personal'. As regards why the original words "without due process of law" were omitted and the present words "except according to procedure established by law" are inserted, the reason is stated to be that the expression is more definite and such a provision finds place in article 31 of the Japanese Constitution of 1946. I will try to confine myself to the second change.

It is no doubt true that in the Japanese Constitution article 31 reads like this but if the other articles that find place in the Japanese Constitution (*viz.*, articles 32, 34 and 35) had also been incorporated in this Draft Constitution that would have been a complete safe guarding of the personal liberty of the citizen. This Draft Constitution has conveniently omitted those provisions.

Article 32 of the Japanese Constitution provides that "no person shall be denied the right of access to the court." According to the present expression it may be argued that the legislature might pass a law that a person will have no right to go to a court of law to establish his innocence. But according to the Japanese Constitution article 32 clearly says that "no person shall be denied the right of access to the court". Is there such a corresponding provision in this Draft Constitution? That is the question. It does not find any place at all.

Article 34 of the Japanese Constitution provides that "no person shall be arrested or detained without being at once informed of the charges against him or without the immediate privilege of counsel, nor shall be detained without adequate cause and upon demand of any such person such cause should be immediately shown in open court in his presence and in the presence of his counsel." Such a clear right has not been given in these draft provisions.

Further, article 35 provides that the right of all persons to be secured in their homes and against entry, searches, etc. shall not be impaired, except upon warrant issued only for probable cause and so on. If for the sake of clarity and definiteness you have imported into this Draft Constitution article 31 of the Japanese Constitution you should in fairness have incorporated the

other articles of the Japanese Constitution, which are relevant and which were enacted for safeguarding the personal liberty of the honest citizen. May I ask the Drafting Committee through its Chairman whether it is clear from this constitution that a man who has been arrested and detained has got the right to resort to a court and prove his innocence? It may be said that the expression "except according to procedure established by law" covers the point but the expression means "procedure established by law" of the legislature and it will competent for the legislature to lay down a provision that in the matter of detention of persons whether for political or other reasons, the jurisdiction of the courts is ousted. We know the decisions of the High Courts of India, especially of Madras and some other High Courts, where it has been laid down by these courts that it is open to the legislature to say that the courts shall not interfere with the action taken by the Government in the case of certain citizens whom they consider to be committing an offence or about to commit an offence or are likely to commit an offence. It is not open to the court to go into the merits or demerits of the grounds on which a person has been detained. The only extent to which the courts can go is to find out whether there is *bona fides* or *mala fides* for the action of the Government, and the burden is laid upon the person to prove that there is *mala fides* on the part of the Government in having issued a warrant of detention or arrest. Therefore the words "except according to procedure laid down by law" would mean, and according to me it does mean, that the future legislature might pass a law by which the right of a citizen to be tried by a court to establish his innocence could be taken away. I do not by this mean to convey that under certain circumstances it may not be necessary for Government to prevent a person from committing an offence and to take the precaution of arresting him and thus prevent him from committing an offence. But I submit that there must be the right of the citizen to go to a court to prove that the ground on which he has been arrested is wrong and he is innocent. That is the elementary right of the citizen as against the executive which might be clothed with power by a party legislature which might pass a law saying that the executive is empowered to take away the liberty of a person under certain circumstances and he will have no right to go to court and prove his innocence. If the framers of the Draft Constitution are able to tell us that these words "except according to procedure established by law" do not deprive a person of his right to go before the court and establish his innocence and he is not prevented from such a course, then it will be another matter. But we must understand that the words "without due process of law" have been held in England and other countries to convey the meaning that every citizen has got the right, when an action has been taken against him depriving him of his personal liberty, to go before the court and say that he is innocent. That right is given under the expression "without due process of law" or "save in accordance with law". In England the law of the land does not deprive a man of this fundamental and elementary right. All laws that may be made are subject to the relevant principle that no man shall be convicted and no man shall be deprived of his liberty without a chance being given to him to prove that he is innocent. Therefore it must be a law, as I have submitted, which will hear him before it condemns a man.

The only reason which has been advanced in the footnote is that this is more definite and that it finds a place in the Japanese Constitution. As I have already stated, let us not sacrifice the liberty of the subject to prove his innocence, by resorting to the provisions of the Japanese Act and not complete that right of the citizen to be tried—that liberty—by omitting the other provisions of the Japanese Act. I shall be satisfied if all the provisions of the Japanese Constitution find a place here, because the other provisions

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clearly state that no person can be deprived of his liberty without his being given the chance to go to court and all assistance given to him. I therefore object to the words "except according to procedure established by law." If by any other method which may be said to be definite provision they can ensure that the citizen cannot be condemned without being heard by a court, I shall be satisfied. That is my reason for moving this amendment.

Mr. Vice-President : Amendment Nos. 529 and 531 are disallowed as verbal amendments.

(Amendment No. 533 was not moved.)

We can now proceed with the general discussion on article 15.

Pandit Thakur Dass Bhargava (East Punjab : General): Sir, I sent an amendment No. 525, which I wanted to amend by amendment No. 9 on List No. 1 (Third week). This and amendment No. 528 are the same. The amendment which has been moved by Mr. Karimuddin differs from these in so far as that the word "personal" before the word "liberty" does not appear in his amendment. I am opposed to the amendment of Mr. Karimuddin. The section as it is, with this amendment namely the substitution of the words "without due process of law" for the words "except according to procedure established by law" is the one which I wish to support.

In this connection the first question that arises is what is the meaning of the word 'law'? According to the general connotation of the word, so widely accepted and the connotation which has been given to this word by Austin, law means an Act enacted by the legislatures whereas I submit that when Dicey used his words "law of the land" he meant law in another meaning.

Similarly, when the Japanese Constitution and other Constitutions used this word in the broad sense they meant to convey by the word 'law' universal principles of justice etc.

According to the present section procedure is held sacrosanct whereas the word 'law' really connotes both procedural law as well as substantive law. I have used the word 'law' in the general sense. Though these words "without due process of law" which are sought to be substituted for the words in the section have not been defined anywhere, their meanings and implications should be understood fully. By using these words "without due process of law" we want that the courts may be authorised to go into the question of the substantive law as well as procedural law. When an enactment is enacted, according to the amendment now proposed to be passed by this House, the courts will have the right to go into the question whether a particular law enacted by Parliament is just or not, whether it is good or not, whether as a matter of fact it protects the liberties of the people or not. If the Supreme Court comes to the conclusion that it is unconstitutional, that the law is unreasonable or unjust, then in that case the courts will hold the law to be such and that law will not have any further effect.

As regards procedure also, if any legislature takes it into its head to divest itself of the ordinary rights of having a good procedural law in this country, to that extent the court will be entitled to say whether the procedure is just or not. This is within the meaning of the word 'law' as it is used in this amendment and as it is generally used. The word 'law' has also not been defined in this Constitution. For the purpose of article 8 the word 'law' has been defined. Otherwise it has not been defined. I would therefore submit that if the words as used in the section remained, namely 'procedure established by law', we will have to find out what is the meaning of the word 'law'. These words would remain vague and it will result in misconceptions and misconstructions. Therefore, unless and until we understand the meaning

of "due process of law" we will not be doing justice to the amendment proposed. I therefore want to suggest that the words "due process of law" without being defined convey to us a sense as used in the American law as opposed to other laws. What will be the effect of this change? To illustrate this I would refer the House to Act XIV of 1908 called the Black Law under which thousands, if not hundreds of thousands of Congressmen were sent to jail. According to Act XIV of 1908 the Government took to themselves the powers of declaring any organisation illegal by the mere fact that they passed a notification to that effect. This Act, when passed, was condemned by the whole of India. But the Government of the day enacted it in the teeth of full opposition. When the non-co-operation movement began it was civil disobedience of this law with which the Congress fought its battle. The Courts could not hold that the notification of the Government was wrong. The courts were not competent to hold that any organisation or association of persons was legal though its objects were legal. The objects of the Congress were peaceful. They wanted to attain self-government but by peaceful and legitimate means. All the same, since the Government had notified, the courts were helpless. This legislation demonstrates the need of the powers of "due process."

Similarly I will give another illustration, and that is Section 26 of the Defence of India Act. We know that the Federal Court held this Section to be illegal and a new Ordinance had to be issued. Unless and until therefore you invest the court with such power and make this Section 15 really justifiable there is no guarantee that we will enjoy the freedoms that the Constitution wants to confer upon us.

The House has already accepted the word "reasonable" in article 13. At least 70 per cent. of the Acts which can evolve personal liberty have now come under the jurisdiction of the courts, and the courts are competent to pronounce an opinion on such laws, whether they are reasonable or not. The House is now estopped from adopting another principle. In regard to personal property and life the question is much more important. So far as the question of life and personal liberty are concerned they must be also under the category of subjects which are within the jurisdiction of the courts.

Therefore it is quite necessary that the House should accept this amendment. There are two ways, as suggested by the previous speakers: either you must put all the sections as in the Japanese Constitution, and we should pass many of the amendments tabled by Messrs. Lari and Karimuddin one of which you were pleased to declare carried in the first instance and which was later declared lost. They seek to introduce into the Constitution principles which the legislature will in future be unable to contravene. All those amendments regarding Fundamental Rights will be carried *ipso facto* if this one amendment of "due process" is accepted. Another thing which will be achieved by the acceptance of this one amendment is a recognition in this Constitution of the real genius of the people. In the old days we have heard of seven or eight *Rishis*, all very pious and intelligent people, holding real power in the land. To them, well versed in the Shastras, the ministers and the ancient kings went for advice. Those *Rishis* controlled the whole field of administration. This old ideal will practically be achieved if the full bench of the Supreme Court Judges well versed in law and procedure and possessing concentrated wisdom had the final say in regard to peoples' rights.

Mr. Vice-President : The honourable Member's time is up.

Pandit Thakur Dass Bhargava: I have to say many things more, Sir. I know the argument against this amendment is that these words due process of law' are not certain or clear. But may I know what is the exact

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meaning of the word 'morality' put in this Constitution.

Mr. Vice-President : I ask the indulgence of the honourable Member. I intimated to him twice that he has exhausted his time. I have half a dozen notes from people competent to speak on this point. I am quite certain that it is not the wish of the honourable Member to curtail the time which I can allow them.

Pandit Thakur Dass Bhargava: I do not want to curtail the time of the others.

Mr. Vice-President: Then you may have two minutes more.

Pandit Thakur Dass Bhargava: Thank you, Sir.

Shri Upendranath Barman: (West Bengal : General): May I say a few words at this stage, Sir?

Mr. Vice-President : I am sorry I cannot oblige the honourable Member.

Pandit Thakur Dass Bhargava: As I was saying, Sir, many other words used in this Constitution have an uncertain meaning. The words 'decency' and 'morality' have not got a definite meaning.

Then, Sir, it is said that this will tend to weaken the administration by the uncertainties which will be imported if this amendment is carried. But, Sir, our liberties will be certain through the particular law which may be reviewed by the court may become uncertain. The administration will not be weakened thereby. I grant that it may probably be that the administration will not have its way. But we want to have a Government which will respect the liberties of the citizens of India. As a matter of fact, if this amendment is carried, it will constitute the bed-rock of our liberties. This will be a *Magna Carta* along with article 13 with the word 'reasonable' in it. This is only victory for the judiciary over the autocracy of the legislature. In fact we want two bulwarks for our liberties. One is the Legislature and the other is the judiciary. But even if the legislature is carried away by party spirit and is sometimes panicky the judiciary will save us from the tyranny of the legislature and the executive.

In a democracy, the courts are the ultimate refuge of the citizens for the vindication of their rights and liberties. I want the judiciary to be exalted to its right position of palladium of justice and the people to be secure in their rights and liberties under its protecting wings.

I commend my amendment and beg the House to pass it.

Shri Chimanlal Chakkubhai Shah [United States of Kathiawar (Saurashtra)]: Mr. Vice-President, Sir, the right conferred by article 15 is the most fundamental of the Fundamental Rights in this Chapter, because it is the right which relates to life and personal liberty without which all other rights will be meaningless. Therefore, it is necessary that in defining this right, we must make it clear and explicit as to what it is that we want to confer and not put in restrictions upon the exercise of that right which make it useless or nugatory. I therefore support the amendment which says that the words 'without due process of law' should be substituted for the words 'except in accordance with the procedure established by law.' Sir, the words 'without due process of law' have been taken from the American Constitution and they have come to acquire a particular connotation. That connotation is that in reviewing legislation, the court will have the power to see not only that the procedure is followed, namely, that the warrant is in accordance with law or that the signature and the seal are there, but it has also the power to see that the substantive provisions of law are fair and just and not unreasonable or oppressive or capricious or arbitrary. That means that the judiciary

is given power to review legislation. In America that kind of power which has been given to the judiciary undoubtedly led to an amount of conservative outlook on the part of the judiciary and to uncertainty in legislation. But our article is in two respects entirely different from the article in the American Constitution. In the American Constitution, the words are used in connection with life, liberty and property. In this article we have omitted the word 'property', because on account of the use of this word in the American Constitution, there has been a good deal of litigation and uncertainty. There has been practically no litigation and no uncertainty as regards the interpretation of the words "due process of law" as applied to 'life' and 'liberty'.

Secondly, Sir, in the word 'liberty' that we have used, we have added the word 'personal' and made it 'personal liberty' to make it clear that this article does not refer to any kind of liberty of contract or anything of that kind, but relates only to life and liberty of person. Therefore, it would be wrong to say that the words 'due process of law' are likely to lead to any uncertainty in legislation or unnecessary interference by the judiciary in reviewing legislation.

Sir, in all Federal Constitutions, the judiciary has undoubtedly the power which at times allows it to review legislation. This is inherent in all Federal Constitutions. In England, for example, the judiciary can never say that a law passed by Parliament is unconstitutional. All it can do is to interpret it. But in Federal Constitutions the judiciary has the power to say that a law is unconstitutional. In several articles of this Constitution, we have ourselves provided for this and given express powers to the judiciary to pronounce any law to be unconstitutional or beyond the powers of the legislature. I have no doubt in my mind that this is a very salutary check on the arbitrary exercise of any power by the executive.

Sir, at times it does happen that the executive requires extraordinary powers to deal with extraordinary situations and they can pass emergency laws. The legislature, which is generally controlled by the executive—because it is the majority that forms the executive—gives such powers to the executive in moments of emergency. Therefore, it is but proper that we should give the right to the judiciary to review legislation.

It may be said that the judiciary may, in times of crisis, not be able to appreciate fully the necessities which have required such kind of legislation. But I have no such apprehension. I have no doubt that the judiciary will take into account fully the necessities of a situation which have required the legislature to pass such a law. But it has happened at times that the law is so comprehensive that the individual is deprived of life and liberty without any opportunity of defence. What is the worst that can happen in an article like this if we put in the words 'without due process of law'? Some man may escape death or jail if the judiciary takes the view that the law is oppressive. Sir, is it not better that nine guilty men may escape than one innocent man suffers? That is the worst that can happen even if the judiciary takes a wrong view.

But, in these days, the executive is naturally anxious to have more and more powers and it gets them. And we have developed a kind of legislation which is called delegated legislation in which the powers are given to subordinate officers to issue warrants and the like. For example, under the Public Safety Measures Acts, if a Commissioner of Police is satisfied that a particular man is acting against the interests of the State or is dangerous to public security, he could detain the man without trial.

We know it to our cost that even the Commissioner of Police does not look into these matters personally as he is expected to do and signs or issues

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warrants on the reports of subordinate officials. It is better under such circumstances that there is some check upon the exercise of such powers if they are arbitrarily used. I therefore fully support the amendment which seeks to substitute the words "without due process of law" in place of the words which have been used in the Article. As Mr. Mahboob Ali Baig has rightly pointed out, these words are taken from the Japanese Constitution but the Drafting Committee has omitted the other provisions which give meaning to these words. Mr. Baig's amendment which seeks to substitute the words "save in accordance with law", I am afraid, will not serve his own purpose. If he has in mind that the full import of all the provisions of the Japanese Constitution read along with the one which the Drafting Committee has put in, should be brought out here, it is better that he accepts the words, "without due process of law", rather than the words "save in accordance with law" which are taken from the Irish Constitution and which probably have the same meaning as the words put in by the Drafting Committee. I therefore fully support amendment No. 528.

Shri Krishna Chandra Sharma (United Provinces: General): Mr. Vice-President, Sir, my amendment No. 523 sought the substitution of the words "without due process of law" for the words "except according to procedure established by law". This article guarantees the personal liberty and life of the citizen. In democratic life, liberty is guaranteed through law. Democracy means nothing except that instead of the rule by an individual, whether a king or a despot, or a multitude, we will have the rule of the law. Sir, the term "without due process of law" has a necessary limitation on the powers of the State, both executive and legislative. The doctrine implied by "without due process of law" has a long history in Anglo-American law. It does not lay down a specific rule of law but it implies a fundamental principle of justice. These words have nowhere been defined either in the English Constitution or in the American Constitution but we can find their meaning through reading the various antecedents of this expression. As a matter of fact, it can be traced back to the days of King John when the barons wrung their charter from him, *i.e.,* the *Magna Carta*. The expression "Per Legum Terrea" in the *Magna Carta* have come to mean "without due process of law". Chapter 39 of the Charter says:—

> "No free man shall be taken, or imprisoned, disseised, or outlawed, exiled, or in any way destroyed; nor shall we go upon him, nor send upon him, but by the lawful judgment of his peers or by the law of the land."

These words were used again in 1331, 1351 and 1355. Statute No. 28 during the reign of Edward III says:—

> "No man of what state or condition so ever he be, shall be put out of his lands or tenements, nor taken, nor imprisoned, nor indicated, nor put to death, without he be brought to answer by due process of law".

Sir, in the American Constitution, these words were first used in 1791:

> "Nor shall any person . . . . . be deprived of life, liberty or property, without due process of law".

What this phrase means is to guarantee a fair trial both in procedure as well as in substance. The procedure should be in accordance with law and should be appealable to the civilised conscience of the community. It also ensures a fair trial in substance, that is to say, that substantive law itself should be just and appealable to the civilised conscience of the community. Sir, various decisions of the American Supreme Court, when analysed, will stress the four fundamental principles that a fair trial must be given, second, the court or agency which takes jurisdiction in the case must be duly authorised by law to such prerogative, third that the defendant must be allowed an opportunity to present his side of the case and fourth that certain assistance

including counsel and the confronting of witnesses must be extended. These four fundamental points guarantee a fair trial in substance.

As to social progress, my Friend Pandit Bhargava has already spoken and I need not repeat the argument here; but for your enlightenment I would like to read a judgment which clarifies the position. The judgment runs (from Willoughby on the Constitution of the United States, p. 1692) :

"Thus, for example, in 1875, in Loan Association *v*. Topeka the Court said:

"It must be conceded that there are such rights in every free government beyond the control of the state,—a government which recognised no such rights, which held the lives, the liberty and the property of its citizens subject at all times to the absolute disposition and unlimited control of even the most democratic depository of power is, after all, a despotism..... The theory of our governments, state or municipal, is opposed to the deposit of unlimited power anywhere. The executive, the legislative and the judicial branches of these governments are all of limited and defined powers. There are limitations on such power which grow out of the essential nature of all free governments—implied reservations of individual rights, without which the social compact could not exist, and which are respected by all governments entitled to the name. No court, for instance, would hesitate to declare void a statute which enacted that A and B who were husband and wife of each other should be so no longer, but that A should thereafter be the husband of C, and B the wife of D, or which should enact that the home stead now owned by A should henceforth be the property of B."

Sir, with these words I support the amendment.

Shri H. V. Pataskar (Bombay : General): Mr. Vice-President, I have come forward only to take a few minutes of the House for supporting the amendment No. 528 which wants to substitute "except according to procedure established by law" by the words "without due process of law". Already the legal aspect of this matter has been discussed at length in this House, but I want to place it before the House from another point of view. We are, Sir, at the present moment in a state which is going to be a democracy. Now, democracy implies party Government and party Government, in our country, is rather new and we have instances which lead us to think that the party machine at work is likely to prescribe procedures which are going to lead to the nullification of the provision which we have made in the Fundamental Rights, which are being given to the people. We know from experience that in certain provinces there are already legislations which have been enacted and which prescribe certain procedures for detention, which have come in for criticism by the public in a very vehement manner. I therefore, submit, Sir, that it is very essential from the point of view of the right of personal liberty, that the words "due process of law" should be particularly there. With these words, Sir, I support the amendment and would not like to repeat what has been said in favour of this amendment already.

Shri K. M. Munshi: Mr. Vice-President, Sir, I want to support amendment No. 528 which seeks to incorporate the words "without due process of law" in substitution of the words "except according to procedure established by law". In my humble opinion, if the clause stood as it is, it would have no meaning at all, because if the procedure prescribed by law were not followed by the courts, there would be the appeal court in every case, to set things right. This clause would only have meaning if the courts could examine not merely that the conviction has been according to law or according to proper procedure, but that the procedure as well as the substantive part of the law are such as would be proper and justified by the circumstances of the case. We want to set up a democracy; the House has said it over and over again; and the essence of democracy is that a balance must be struck between individual liberty on the one hand and social control on the other. We must not forget that the majority in a legislature is more anxious to

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establish social control than to serve individual liberty. Some scheme therefore must be devised to adjust the needs of individual liberty and the demands of social control. Eminent American constitutional lawyers are agreed on the point that no better scheme could have been evolved to strike a balance between the two. Of course, as the House knows, lawyers delight to disagree and there is a certain volume of opinion against it in America, but as pointed out by my honourable Friend, Mr. C. C. Shah, we have made drastic changes in the American clause. The American clause says that no person shall be deprived of his life, liberty or property without due process of law. That clause created great difficulties with regard to laws relating to property. That word has been omitted. The word 'liberty' was construed widely so as to cover liberty of contract and that word has been qualified. This clause is now restricted to liberty of the person, that is, nobody can be convicted, sent to jail or be sentenced to death without due process of law. That is the narrow meaning of this clause which is now sought to be incorporated by amendment No. 528.

Now, the question we have to consider, I submit, is only this. What are the implications of this 'due process'? 'Due process' is now confined to personal liberty. This clause would enable the courts to examine not only the procedural part, the jurisdiction of the court, the jurisdiction of the legislature, but also the substantive law. When a law has been passed which entitles Government to take away the personal liberty of an individual, the court will consider whether the law which has been passed is such as is required by the exigencies of the case, and, therefore, as I said, the balance will be struck between individual liberty and the social control. In the result, Governments will have to go to the court of law and justify why a particular measure infringing the personal liberty of the citizen has been imposed. As a matter of fact, the fear that in America the 'due process' clause has upset legislative measures, is not correct. I have not got the figures here, but I remember to have read it some where in over 90 per cent of the cases on the 'due process' clause which have gone to the American courts, action of the legislatures has been upheld. In such matters involving personal liberty Governments had to go before the court and justify the need for passing the legislation under which the person complaining was convicted. In a democracy it is necessary that there should be given an opportunity to the Governments to vindicate the measures that they take. Apart from anything else, it is a whole some thing that a Government is given an opportunity to justify its action in a court of law.

I know some honourable Members have got a feeling that in view of the emergent conditions in this country this clause may lead to disastrous consequences. With great respect I have not been able to agree with this view (*Interruption*). Take even our Public Safety Acts in the provinces. In view of the condition in the country they would certainly be upheld by the court of law and even if one out of several acts is not upheld, even then, I am sure, nothing is going to happen. Human ingenuity supported by the legislature and assisted by the able lawyers of each province will be sufficient to legislate in such a manner that law and order could be maintained.

Therefore, my submission is that this clause is necessary for this purpose and is not likely to be abused. We have, unfortunately, in this country legislatures with large majorities, facing very severe problems, and naturally, there is a tendency to pass legislation in a hurry which give sweeping powers to the executive and the police. Now, there will be no deterrent if these legislations are not examined by a court of law. For instance, I read the other day that there is going to be a legislation, or there is already a legislation, in one province in India which denies to the accused the assistance of lawyer. How is that going to be checked? In another province, I read that the certificate

or report of an executive authority—mind you it is not a Secretary of a Government, but a subordinate executive—is conclusive evidence of a fact. This creates tremendous difficulties for the accused and I think, as I have submitted, there must be some agency in a democracy which strikes a balance between individual liberty and social control.

Our emergency at the moment has perhaps led us to forget that if we do not give that scope to individual liberty, and give it the protection of the courts, we will create a tradition which will ultimately destroy even whatever little of personal liberty which exists in this country. I therefore submit, Sir, that this amendment should be accepted.

Shri Alladi Krishnaswami Ayyar (Madras : General): Mr. Vice-President, Sir, the debate on this article reveals that there seems to be a leaning on the part of a good number of members in this House in favour of the expression 'due process' being retained and not for substituting the expression 'procedure established by law', which is the expression suggested by the Drafting Committee in its last stage. I am using the words 'in its last stage' because my honourable Friend Mr. Munshi has taken the opposite view.

Sir, at least in justification of the change suggested by the Drafting Committee, I owe it to myself, to my colleagues and the respected Chairman of the Drafting Committee, to say a few words, because, up to the last moment, presumably, the House is open to conviction.

The expression 'due process' itself as interpreted by the English Judges connoted merely the due course of legal proceedings according to the rules and forms established for the protection of rights, and a fair trial in a court of justice according to the modes of proceeding applicable to the case. Possibly, if the expression has been understood according to its original content and according to the interpretation of English Judges, there might be no difficulty at all. The expression, however, as developed in the United States Supreme Court, has acquired a different meaning and import in a long course of American judicial decisions. Today, according to Professor Will is, the expression means, what the Supreme Court says what it means in any particular case. It is just possible, some ardent democrats may have a greater faith in the judiciary than in the conscious will expressed through the enactment of a popular legislature. Three gentlemen or five gentlemen, sitting as a court of law, and stating what exactly is due process according to them in any particular case, after listening to long discourses and arguments of briefed counsel on either side, may appeal to certain democrats more than the expressed wishes of the legislature or the action of an executive responsible to the legislature. In the development of the doctrine of 'due process', the United States Supreme Court has not adopted a consistent view at all and the decisions are conflicting. One decision very often reversed another decision. I would challenge any member of the Bar with a deep knowledge of the cases in the United States Supreme Court to say that there is anything like uniformity in regard to the interpretation of 'due process'. One has only to take the index in the Law Reports Annotated Edition for fifteen years and compare the decisions of one year with the decisions of another year and he will come to the conclusion that it has no definite import. It all depended upon the particular Judges that presided on the occasion. Justice Holmes took a view favourable to social control. There were other Judges of a Tory complexion who took a strong view in favour of individual liberty and private property. There is no sort of uniformity at all in the decisions of the United States Supreme Court.

Some of my honourable Friends have spoken as if it merely applied to cases of detention and imprisonment. The Minimum Wage Law or a Restraint on Employment have in some cases been regarded as an invasion of personal liberty and freedom, by the United States Supreme Court in its earlier decisions, the theory being that it is an essential part of personal liberty that every

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person in the world be she a woman, be he a child over fourteen years of age or be he a labourer, has the right to enter into any contract he or she liked and it is not the province of other people to interfere with that liberty. On that ground, in the earlier decisions of the Supreme Court it has been held that the Minimum Wage Laws are invalid as invading personal liberty. In recent times I quite realise, after the New Deal, the swing of the pendulum has been other way. Even there, there has not been any consistency or any uniformity. I hope that if this amendment is carried, in the interpretation of this clause our Supreme Court will not follow American precedence especially in the earlier stages but will mould the interpretation to suit the conditions of India and the progress and well-being of the country. This clause may serve as a great handicap for all social legislation, for the ultimate relationship between employer and labour, for the protection of children, and for the protection of women. It may prove fairly alright if only the Judges move with the times and bring to bear their wisdom on particular issues. But since the British days we have inherited a kind of faith in lawyers, legal arguments, legal consultations and in courts; I, for my part, having flourished in the law, have no quarrel with those people who believe in the lawyer. In the earlier stages of American history, lawyers ranged themselves on the side of great Trusts and Combines and in favour of Corporations who were in a position to fee them very well, sometimes in the name of personal liberty, sometimes in the name of protection of property. After all the word 'personal liberty' has not the same content and meaning as is imported into it by some of our friends who naturally feel very sensitive about people being detained without a proper trial. I equally feel it but that is not the meaning of personal liberty attributed by the American Courts in the context of 'due process'. I trust that the House will take into account the various aspects of this question, the future progress of India, the well-being and the security of the States, the necessity of maintaining a minimum of liberty, the need for co-ordinating social control and personal liberty, before coming to a decision. One thing also will have to be taken into account, *viz.,* that the security of the State is far from being so secure as we are imagining at present. Take for example the normal detention cases. I may tell you as a lawyer, I am against the man being detained without his being given an opportunity; but an opportunity is not necessarily given in a court of law, as a result of argument, as a result of evidence, as a result of examination or cross-examination. Today I know in Madras a Special Committee has been appointed consisting of a Judge of the High Court, the Advocate-General of Madras and another person to go into the cases of detention and to find out whether there are proper materials or not. Now all these cases might have to go to Courts of law and possibly it is a good thing for lawyers. Though I am getting old I do not despair of taking part in those contests even in the future.

The support which the amendment has received reveals the great faith which the Legislature and Constitution makers have in the Judiciary of the land. The Drafting Committee in suggesting "procedure" for "due process of law" was possibly guilty of being apprehensive of judicial vagaries in the moulding of law. The Drafting Committee has made the suggestion and it is ultimately for the House to come to the conclusion whether that is correct, taking into consideration the security of the State, the need for the liberty of the individual and the harmony between the two. I am still open to conviction and if other arguments are forthcoming I might be influenced to come to a different conclusion.

Mr. Z. H. Lari : Mr. Vice-President, the last speaker who has spoken on this article has drawn the attention of the House to dangers to the State which are likely to arise if the article as it stands is amended by the amendment No. 528 or 530. I have not got that experience which the learned

speaker has but with the little knowledge of the working of the Legislatures during the last ten years, I can say that it is necessary not only in the interest of individual liberty but in the interest of proper working of legislatures that such a clause as due process of law clause should find a place in the Constitution. It is open to that speaker at the fag end of his life as a lawyer to have a fling at the profession of law but I can say that assistance of lawyers is absolutely essential to secure justice.

Shri Alladi Krishnaswami Ayyar: On a point of order. I had no fling at the profession of law.

Mr. Z. H. Lari: I stand corrected.

I feel that two things are necessary. We all know that the State, these days, is all-powerful. Its coercive processes extend to the utmost limits but still there is a phase of life which must be above the processes of Executive Government, and that is individual liberty. In America no such word as 'personal' existed. There the word liberty alone existed and possibly in that state of things, it was possible to interpret it in such a way as to extend the scope of due process of law to other spheres of life but when the word 'personal liberty' has been definitely inserted in the clause, I doubt whether any Court which is conscious of the requirements of a State as well as conscious of the necessities of individual liberty, will be so uncharitable to the interest of the State as to interpret in a way to thwart the proper working of the State. My friend admitted that in the latter rulings in America itself there has been a recognition of the necessities of the State and the word has been interpreted in such a way as not to obstruct the proper working of the State. My submission would be that in this land our Supreme Court will recognise the limits of individual liberty as well as the necessities of the State and interpret it in such a way as to ensure individual liberty of a man.

Pandit Thakur Dass Bhargava: The Drafting Committee also said so in their note.

Mr. Z. H. Lari: My friend is right; and the only reason which was given by the Drafting Committee of which the honourable Speaker who preceded me was a member also, was that the words 'due process of law' is not specific and the word as was used in the Japanese Constitution is more specific. No doubt the words as they stand in the Japanese Constitution are specific because the procedure is indicated and definitely laid down there. What is the essence of the due process of law? I think they are two. First is, enquiry before you condemn a man. And then there is judgment after trial. If any procedure which is adopted by any legislature provides for the hearing of a person who is suspected or is accused, and then after a proper hearing, enables him to get the benefit of a judgment based on that enquiry, my submission is, that the requirements of the due process of law are complied with. And I would beg of the House to consider whether in any country, however emergent and however unstable its conditions, is it necessary or is it not necessary that every individual citizen should feel that he will be heard before he is condemned, and that he will be dealt within the light of the judgment based on the enquiries and not be subject to arbitrary detention? The House will also remember that lately there was the question of drafting human rights, and already such a draft has been prepared. And one of the clauses there in is that nobody should be subjected to arbitrary detention. Now, what is the way to prevent arbitrary detention? If you have the words in this clause, as they stand at present, namely, 'procedure established by law' it means that the legislature is all-powerful and what ever procedure is deemed proper under the circumstances will be binding upon the courts. But, Sir, there are certain procedures which are the inherent rights of man and they should not be infringed upon by any legislative Assembly. Men as well as

[Mr. Z. H. Lari]

assemblies, or any mass of people are subject to passing emotions, and you will realise that in the present state of things, particularly keeping in view the constitution that we are going to have, namely, a parliamentary government, the legislature is controlled by a Cabinet, which means by the executive. You have also the provisions about having ordinances which means that the cabinet—a body consisting of eight to ten persons—decide upon a particular course of action, issue as an ordinance, and, the legislature then has to approve of it, otherwise it would amount to a vote of censure. Therefore the legislature in the last analysis means only the cabinet or the executive and nothing but the executive. The question before us is whether you are going to give such powers to the Executive which can infringe even the elementary rights of a person, the elementary rights of personal liberty, or whether you should not put certain checks on the executive which can be done only if you accept the amendment which has been moved by a Congress member, *i.e.*, amendment No. 528. My amendment No. 530 is exactly similar.

My friend who spoke on the other side gave instances of legislation in the British period, of rights which were curtailed, and of innocent persons jailed. But I submit with all humility, that every legislature and every government is liable to do such things which the British Government did. You cannot excuse excess of law simply because those excesses are committed by a popularly elected legislature. That is why there are two domains, one is the domain of individual liberty, and the other domain is where the State comes in to regulate our life. What do you leave to the State? You leave to the State everything except personal liberty. As to stability of the State my submission would be that if there are classes or communities which are prone to violence, there are sufficient provisions in this Constitution to deal with them—they are in article 13. There, the State can come in and curtail the liberty of such persons, and even nullify their activities. What can an individual do? If there are parties which have got objectives which run counter to the stability of the State, you have already got enough provisions where-by the State can declare those bodies unlawful. But this particular clause deals with a very small sphere of action, namely, personal liberty. My submission is that our State is not so weak as to be subverted by the activities of a particular individual, and mark that, that individual will not have the liberty to do everything. He can be brought before a court. He can be judged in a court of law; no doubt, he will have the assistance of counsel and the Government will have the obligation to produce evidence against him. Does this amount to curtailing the powers of the State? Does this amount to subverting the State? Does it amount to annihilating the State? With all respect to the previous Speaker, I feel he took a very uncharitable view of the citizens of our State, and took a still more uncharitable view of the strength of the State which will emerge after the promulgation of the new Constitution. No doubt, we have to go by realities. We have to take into consideration stern facts. But I may remind the House of one thing. In America, this clause is accepted and is reproduced in the Japanese Constitution. You know the Americans have been responsible for framing the Japanese Constitution. A constitution for a fascist country, a country where individuals are prone to violence—they wanted to overthrow the peace of the world—when they were drafting a constitution for such a country, composed of such citizens, they laid down clauses 31, 32, 33 and 34 which say that nobody shall be denied access to courts, nobody shall be arrested unless causes are shown against him, and nobody shall be denied the privilege of the assistance of counsel. May I say that if the framers of this latest constitution, based on experience and knowing the nature of the people living in Japan, who are not a very peace

loving people as was demonstrated in the last war, have accepted these provisions, that means that these provisions have stood the test of time and have safeguarded the liberty of the individual and also guaranteed the integrity of the state. There are two things by which we have to go. One is experience of others. No doubt, every clause can be criticised in one way or other. But we have to be guided by experience. Here is the experience of other countries, and this has shown that the words 'due process of law' can exist without jeopardising the existence of the State. Secondly, we know that not only here, but throughout the world every assembly is likely to misuse its power. It is bound to happen. Power corrupts. We should profit by the experience of other countries and by what has been observed for centuries. Or should we go by the *ipse dixit* of X, Y, Z who says that there seems to be some germ of disruption in this clause? My submission is that it is only making a bogey out of nothing. We should not be led away by this bogey into accepting this clause. If this clause is accepted, then the whole Constitution becomes lifeless. The article, as it stands, is lifeless and it makes also the whole Constitution lifeless. Unless you accept this amendment, you would not earn the gratitude of future generations. Therefore, Sir, I pray that this motion which has been supported by several members should be accepted.

With these words, Sir, I support the amendment.

Mr. Vice-President : The House stands adjourned till 10 A.M. tomorrow.

The Constituent Assembly then adjourned till ten of the Clock on Tuesday, the 7th December, 1948.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 7th December, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 15—*Contd.*

Mr. Vice-President (Dr. H. C. Mookherjee) : We can now resume general discussion on article 15.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, May I request you to allow this matter to stand over for a little while?

Mr. Vice-President : Is that the wish of the House?

Honourable Members : Yes.

Article 20

Mr. Vice-President : Then we can go to the next article, that is article 20.

The motion before the House is:

"That article 20 form part of the Constitution."

I have got a series of amendments which I shall read over. Amendment No. 613 is disallowed as it has the effect of a negative vote. Nos. 614 and 616 are almost identical; No. 614 may be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in the beginning of article 20, the words 'Subject to public order, morality and health,' be inserted."

Sir, it was just an omission. Honourable Members will see that these words also govern article 19; as a matter of fact they should also have governed article 20 because it is not the purpose to give absolute rights in these matters relating to religion. The State may reserve to itself the right to regulate all these institutions and their affairs whenever public order, morality or health require it.

Mr. Vice-President : I can put amendment No. 616 to the vote if it is to be pressed. Has any Member anything to say on the matter?

(Amendment No. 616 was not moved.)

Mr. Vice-President : There is, I understand, an amendment to amendment No. 614 in List No. VI. Is that amendment to amendment being moved?

Mr. Naziruddin Ahmad (West Bengal : Muslim): Yes, Sir, I move:

"That for amendment No. 614 of the List of Amendments, the following be substituted namely:—

That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely:—

'(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.' "

[Mr. Naziruddin Ahmad]

Sir, the amendment moved by Dr. Ambedkar just now is also to the same effect. I should think that instead of the expression "subject to public order, morality and health" this expression would be better. The expression "ensuring public order etc.," is perhaps better than "subject to public order etc." This type of draftsmanship has been adopted in other places in the Constitution.

(Amendment Nos. 15 and 16 in List I and Nos. 615 and 617 were not moved.)

Shri Lokanath Misra (Orissa : General) : Sir, I move:

"That in clause (a) of article 20, after the word 'maintain' the words 'manage and administer' be inserted."

One who has a right to establish and maintain an institution for religious and charitable purposes ought also to have the right, unless such institutions offend against public order and morality or any established law, to manage and administer the same. Otherwise, there will be difficulty.

Syed Abdur Rouf (Assam : Muslim) : Sir, I beg to move:

"That in clause (a) of article 20, for the words 'religious and charitable purposes', the words 'religious, charitable and educational purposes' be substituted."

We are dealing here with a subject which empowers religious denominations to have the right to establish and maintain institutions for religious and charitable purposes only. Religious education is as important as religion itself. Without religious education the charitable purposes or religious purposes would lose all meaning. Therefore, I hope my amendment would be accepted by the House.

(Amendment Nos. 17 of list 1, 620 and 622 were not moved.)

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in clause (c) of article 20, for the words 'and immovable property' the words 'immovable and incorporeal property' be substituted."

Clause (c) provides for acquisition of movable and immovable property. It does not mention incorporeal property. Copyright is incorporeal property. It is neither movable nor immovable. The amendment would perhaps fill in a lacuna.

(Amendment Nos. 623 to 625 were not moved.)

Mr. Vice-President : Article 20 is for general discussion.

Shri Jaspat Roy Kapoor : (United Provinces : General) : Mr. Vice-President, Sir, while I accord my support to article 20, I must confess that I do not feel happy over the phraseology of it or the scope of it. I very much wish that in clause (a) thereof, the words 'and charitable', were deleted. The article then should have read:

"Every religious denomination or any section thereof shall have the right: (a) establish and maintain institutions for religious purposes." Sir having conceded the right of free profession of religion and propagation of religion, surely, it is a necessary corollary that the right to establish and maintain religious institutions should be also conceded. But to concede it as a fundamental right that any religious denomination or section thereof can maintain a charitable institution exclusively for its own benefit and deny its benefit to any other section of society is certainly repugnant to the idea of fraternity and common nationality.

Let us clearly understand what the implications, the mischievous implications I should say, of this article are. It means that I, as a member of the Hindu religious community or even as a member of a section of that community called Khatris, have the right, derive the right under this article 20, to establish say *piao* or place where water is served to all. Under this article. I will have it as a fundamental right to establish a *piao* and serve therein water only to the Khatris or to other caste Hindus and not to other sections of the Hindu community, much less to Muslims or Christians. This means that there can be a Christian, hospital where only Christians may be admitted and a non-Christian, however badly he might need medical service and even if he were lying at the door of the Christian hospital dying there, may be refused admission in the Christian hospital. It means that the upper class Hindus shall have it as a fundamental right to establish a *piao*, refusing at the same time water to members of the Scheduled castes. It means, Sir, that the Muslims in a Muslim 'sabil' may impose restrictions for the service of water to non-Muslims. I have been always told that serving free water to all without distinction of caste or creed is a very religious act according to Islamic law. I wonder if my Muslim friends want that they should be conceded this as a fundamental right. I wonder if my depressed or Scheduled caste friends would like that the upper caste Hindus should have this as a fundamental right that they can establish a *piao* where members of the Scheduled castes shall be denied water. I am sure neither my Muslim friends nor my Scheduled caste friends want to concede this as fundamental right.

One of my Christian friends, Sir, for whom I have very great respect, and I may also say, very great affection—he may not be knowing it—told me the other day that a particular section of the Christians would like to have a hospital of their own where at the time of their death or at their last moments they may get the service of Christian priests. Sir, it is not my intention that they should not have this privilege and facility. They can have this privilege and facility not only in their own hospitals but in every hospital in the country. The question is not whether they should have this facility in their own hospital or in other hospitals; but it is whether it should be open to a Christian hospital to say that no non-Christians shall be allowed entry therein. I am not a Christian; but I have very great respect for the Christian religion, and I make bold to say that such an act on the part of any Christian management would certainly be a non-Christian act. Why then, Sir, should such a right be conceded as a fundamental right ?

Our society already stands disunited today. There are so many castes and creeds and communities in it. We have been tolerating these communal institutions and we may have to tolerate them for sometime more. The deletion of the words 'and charitable', let there be no mistake about it, will not take away the existing right or the existing concession. This is not a right. This is rather a concession to the weakness of the society. So, let this concession continue until society as a whole voluntarily realises that this is something which is against the interests of the country as a whole, something which is against the unity of the Nation and something which is against the idea of fraternity and brotherhood. Until Society voluntarily realises it, let the concession remain. But the question is, must this right or concession hereafter be recognised by a statutory law, and not only *recognised* as a right, but be granted also the sanctity, the glory and the dignity of fundamental right?

I would appeal to the honourable Members to realise the grave implications of the existence of the words 'and charitable'. I will quote an instance from my own place which may perhaps bring home to honourable Members the

[Shri Jaspat Roy Kapoor]

gravity of the situation that might arise after we have passed the present article in its present form. In my place, a number of years ago, an upper class Hindu established a *piao* in a particular locality and service of water therein to the Scheduled castes was prohibited. This led to great resentment amongst us, particularly amongst Congressmen. They approached the orthodox section of the Hindu community and entreated them to remove this restriction. The orthodox people refused to agree. Ultimately, as a result thereof, there was a communal riot. Thereafter, partly by our appeal and partly by pressure, we could make them withdraw those restrictions. But, Sir, if the Constituent Assembly includes in the list of Fundamental Rights this very restriction or right of exclusion as a fundamental right, these orthodox people will fling this sacred book of our Constitution at our face and say : "How foolishly you are talking after giving us the right to impose such restrictions in respect of our *piao"*.

The highest body in the land, the sovereign constitution making body of the land having conceded it as a fundamental right, what business have you now to tell us that we are in the wrong and that we should throw open our *piaos* to all sections of the Hindu community? Therefore, Sir, I would respectfully appeal to this House to agree to delete these words.

I am told, Sir, that the retention of these words is in the interests of the minority communities. I fail to see how it is in the interests of any minority community. I fail to see how it is in the interests of even the majority community. The minority communities, it will be readily conceded, are not so rich as the majority community. Probably all the minorities put together are not so rich as the majority communities. So the majority community, if it so wishes, can establish charitable institutions in much larger numbers than the minority communities and if such majority charitable institutions restrict their use, their benefit, to the members of the majority community, surely it is the minority communities who will suffer and not the majority community, though the majority may have this thing as a black spot on their face; but that is another thing. I would, therefore, appeal to the members of the minority communities here to agree to the deletion of these words. If they agree to the deletion of these words, I am sure the House will unanimously agree to delete these words and improve this article. If they do not agree to this, we must accept this article as it stands as we must not do anything which is not agreeable and acceptable to them. With these words, Sir, I support article 20, not of course with any great pleasure but with some regret and disappointment, making a last minute appeal to the House to agree to the deletion of these words. If need be, Sir, I would appeal to my honourable Friend, Dr. Ambedkar, to postpone the final disposal of this clause and consult members of the minority communities whose champion he undoubtedly is whether they are agreeable to the deletion of these words and then amend the article accordingly.

One more point, Sir, one more reason for suggesting the deletion of these words, though this may not be of any great strength. Sir, at the last moment I am urging this poor argument because it does sometimes happen that when strong arguments fail, weak and poor arguments prevail. The heading of this sub-chapter is "Rights Relating to Religion" and surely, Sir, these words "and charitable" do not properly fit in in this chapter at all. If for no other reason, at least on the grounds of technicality, I would appeal to my honourable Friend, Dr. Ambedkar, to agree to the deletion of these words. With these words. Sir, I support article 20.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. Vice-President, Sir, I had no intention of speaking on this article but I find that my honourable Friends who

have just spoken have been appealing to the minorities. I want to tell the House, Sir, that there is no minority in this country. I do not consider myself a minority. In a secular State, there is no such thing as minority. I have got the same rights, status and obligations as anybody else. I wish those who consider themselves as the majority community would forget that there is any minority today in this country. (An honourable member: *Hear, hear.*) Now, Sir, with regard to article 20, as far as I understood, my honourable Friend the last Speaker wants clause (a) to be *deleted.* I will just read clause (a) of article 20:—

"Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes."

Now, Sir, this article gives the right to everybody—it does not matter to what religion he belongs or what religion he professes—to have his own private religious institutions if he so wants. If a person has got money and at the time of his death he wants to make a will and dedicate his property to some charitable purpose or religious purpose of a private nature, I do not think, Sir, that people should object to it. After all, as I have said already, religion is a private matter between the individual and his Creator, and if I, Sir, wish that my property should be utilised for a particular purpose after my death, I see no reason why the State should interfere with it. It is not a matter of public interest. After all it is a private individual who wishes that his religion should be observed in a particular manner.

Kazi Syed Karimuddin (C. P. and Berar: Muslim): What does the honourable Member have in his mind, a private or public institution?

Mr. Tajamul Husain :

"Every religious denomination or any section thereof shall have the right—

(a) to establish and maintain institutions for religious and charitable purposes—"

These are the exact words in the article. I want these words to remain where they are. I do not want these words to be deleted.

The Honourable Dr. B. R. Ambedkar : I have nothing to say.

Mr. Vice-President : I will now put the amendments, one by one, to vote.

The question is:

"That in the beginning of article 20, the words "Subject to public order, morality and health," be inserted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That article 20 be numbered as clause (1) of that article and the following new clause be added at the end, namely:—

'(2) Nothing in clause (1) of this article shall affect the operation of any existing law or prevent the State from making any law for ensuring public order, public morality and public health.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (a) of article 20, after the word "maintain" the words 'manage and administer' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (a) of article 20, for the words 'religious and charitable purposes' the words 'religious, charitable and educational purposes' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (c) of article 20, for the words 'and immovable property' the words 'immovable and incorporeal property' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

That article 20, as amended, be adopted.

The motion was adopted.

Article 20, as amended, was added to the Constitution.

New Article 20-A

Mr. Vice-President : Now we come to amendment No. 626 by Mr. Mahboob Ali Baig. I disallow this because two similar amendments have been rejected by this House. These two amendments are No. 612 and No. 440. We now pass on to article 21.

Article 21

Mr. Vice-President : We shall consider the amendments one by one.

Amendment No. 627 is out of order as it has the effect of a negative vote.

(Amendment Nos. 628, 629, 630, 634, and 631 were not moved.)

Amendment No. 632. The first part of this amendment standing in the name of Syed Abdur Rouf is disallowed as being nothing but a verbal amendment. So far as the second part is concerned, I can allow it to be moved.

Syed Abdur Rouf : Sir, I beg to move:

"That in article 21, after the word 'which' the words 'wholly or partly' be inserted."

If my amendment is accepted, Sir, the article will read like this: "No person may be compelled to pay any taxes, the proceeds of which wholly or partly are specifically appropriated in payment of expenses for the promotion or maintenance of any particular religion or religious denomination." If my amendment is not accepted, a person may be compelled to pay taxes, the proceeds of which will partly be appropriated for religious purposes. This is certainly not desirable, and I think that unless my amendment is accepted, the very intention of this article will be frustrated. Therefore, Sir, I hope that my amendment will be accepted by the House.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That in article 21, for the words 'the proceeds of which are' the words 'on any income which is' be substituted."

Sir, the purpose of the previous amendment will be served by my amendment and they must be considered together. The article says "No person may be compelled to pay any taxes the proceeds of which etc." If my amendment is accepted, it would read like this: "No person may be compelled to pay any taxes on any income etc." Sir, taxes are paid not on the proceeds, but on the income. Proceeds rather imply the gross receipts. Taxes do not apply to proceeds, but really to income. In fact, there is the further limitation of this 'proceeds' which are specifically appropriated for payment of the expenses

for the promotion or maintenance of any particular religious or charitable denomination. My point is that you do not appropriate the *gross proceeds* of any undertaking or any property to any religious or charitable denomination. The reason is that what you appropriate for religion or religious denomination is the income, that is, the gross receipts *minus* collection expenses and other things. I submit, Sir, that the word 'income' is the more appropriate word, and if this is accepted, the difficulty pointed by Mr. Syed Abdur Rouf, while moving his amendment No. 632, will also be met. In fact, he and I felt that there is some difficulty in the context and the amendments are directed towards the same purpose.

(Amendment Nos. 635 and 636 were not moved.)

Mr. Vice-President : The article is now open for general discussion.

Shri Guptanath Singh (Bihar : General): *[Mr. Vice-President, I am surprised at the fact that today we are going to perpetuate by article 21 the innumerable atrocities that have been perpetrated in India in the name of religion. It states that the property, which a person holds in the name of religious institution, would be exempted from all taxation. I hold that the property in India which stands in the name of some religion or some religious institutions such as temples, mosques and churches, is extremely detrimental to the interests of the country. That property is of no use to the Society. I would like that in our Secular State such type of folly be ended once for all in our country. The State is above all gods. It is the God of gods. I would say that a State being the representative of the people, is God himself. Therefore it should certainly have the right of taxation every type of property. Therefore, the property held in the name of religion and by religious institutions should certainly be taxed. I fear that if this article is not deleted from the Constitution, the majority of capitalists and Zamindars will try to donate their property for the advancement of religion and posing as the champions of religion would continue to perpetrate high handedness in the name of religion. Our State will become bankrupt as a consequence of the drying up of the source of taxation. I, therefore, pray that we should not make this constitution in such a way as to benefit only the Mullas, the Pandits and the Christian priests. I do not think I have any thing more to add what I have already said in this connection.]

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, I oppose both the amendments. The article says that no tax shall be imposed the proceeds of which will be specifically ear-marked for supporting any religious denomination. Syed Abdur Rouf's amendment desires that we should use the words "wholly or partly". I believe the whole includes the part, and therefore, that amendment is unnecessary. The other amendment moved by Mr. Naziruddin Ahmad (amendment No. 633) absolutely is inconsistent with the object of the article. The article says that unlike in the past where particular kings imposed a kind of tax to give importance to the religion which they professed, the article is intended to see that no such tax is imposed in any name or form, the proceeds of which will be ear-marked for encouraging any particular denomination or sect.

Mr. Naziruddin Ahmad, on the other hand, wants by his amendment to exempt the income of all temples and religious endowments. This has no bearing at all to the matter on hand. What article 21 requires is that no tax shall be imposed by the State the proceeds of which are to be appropriated for the maintenance of any particular religious denomination. I request that

*[ ] Translation of Hindustani speech.

[Shri M. Ananthasayanam Ayyangar]

the article may be allowed to stand as it is. In the past we have had various Kings belonging to various denominations levying taxes in various shapes and forms. The Muhammadan Kings recovered a particular kind of tax for supproting Mosques. The Christians did not do so in this country. The ancient Hindu Kings collected a cess called the Tiruppani cess for supporting a particular temple or temples in my part of the country. In a secular State where the State is expected to view all denominations in the same light, and not give encouragement to any one particular denomination at the expense of others, this provision is absolutely necessary. This is part and parcel of the Charter of liberty and religious freedom to see that no particular denomination is given any advantage over another denomination. This article is very important and it safeguards the interests of all minorities and religious pursuits. I therefore, appeal to the members who have moved these amendments not to press them and to accept the article as it stands.

The Honourable Dr. B. R. Ambedkar : I do not accept amendment No. 632 or amendment No. 633.

Shri H. J. Khandekar : (C. P. and Berar : General) : Sir, I want to speak.

Mr. Vice-President : I am afraid it is too late. I shall now put the amendments to the vote.

The question is:

"That in article 21, after the word 'which' the words 'wholly or partly' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in article 21, for the words 'the proceeds of which are' the words 'on any income which is' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 21 stand part of the Constitution."

The motion was adopted.

Article 21 was added to the Constitution.

Article 22

Mr. Vice-President : The motion before the House is:

"That article 22 form part of the Constitution."

'The first amendment is No. 637. It is out of order as it has the effect of a negative vote. Amendment No. 638, first part, is disallowed as it has the effect of a negative vote. Amendment No. 638, second part may be moved.'

(Amendment Nos. 638 and 639 were not moved.)

Amendment No. 640. You can move only one alternative.

Mr. Mohamed Ismail Sahib (Madras : Muslim) : I shall move the first alternative, Sir.

Sir, I beg to move :

"That for article 22, the following be substituted :

'22. No person attending an educational institution maintained, aided or recognised by the State shall be required to take part in any religious instruction in such institution without the consent of such person if he or she is a major or without the consent of the respective parent or guardian if he or she is a minor.' "

Sir, article 22 in the Draft Constitution as it stands puts a taboo on all religious instruction being given in State-aided schools or State educational institutions. It is not necessary for a secular State to ban religious education

in State institutions. Sir, it will not be in contravention of the neutrality or the secular nature of the State to impart religious instruction. It will be going against the spirit of the Secular State if the State compels the students or pupils to study a religion to which they do not belong. But, if the pupils or their parents want that religious instruction should be given in the institutions in their own religion, then, it is not going against the secular nature of the State and the State will not be violating the neutrality which it has avowedly taken in the matter of religion. My amendment purports to make a leeway in case religious instruction is required to be given in the schools; it puts the matter in a negative form. It does not say that religious instruction must be imparted at all costs in educational institutions; it only says, no compulsion shall be put upon anybody to study in any school, a religion, to which he or she does not belong. Therefore, my amendment is quite harmless and it does not go in any way against the spirit of the Constitution.

Sir, the necessity of imparting religious instruction has been recognised in many countries which are non-religious in nature. They have made religious instruction even compulsory, that is, compulsory with regard to those people who want such instruction to be given to the children in the religion to which they belong. They have not thought it fit to ban religion altogether from their Secular State. Therefore, I hold that we shall not be doing anything in violation of the secular nature of our State if we do not ban religious instruction altogether. As my amendment proposes, we shall leave the matter to the future, to the Parliament. According to my amendment, we are not saying anything now positively about religious instructions: we are only saying, no body shall be compelled to have religious instructions in a religion to which he does not belong. Whether to give religious instructions or not may be left to Parliament. According to my amendment, that is my proposal, Sir.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, the amendment which stands in my name is further sought to be amended by me in amendment No.19 of List I. I will therefore formally move the amendment as it is. The amendment which I had originally given is this—

"That for article 22, the following be substituted:—

'22. The State shall not compel anyone to have religious instruction in a religion not his own in schools against his wishes, but the State shall endeavour to develop religious tolerance and morality among its citizens by providing suitable courses in various religions in schools.' "

To this, Sir, I have given notice of an amendment No. 19 in List I which says—

"That clauses (1) and (3) of article 22 be deleted."

I find that deletion of clause (1) is not accepted by Dr. Ambedkar but I would like to say what I really want to say on this.

Mr. Vice-President : What about amendment No. 20?

Prof. Shibban Lal Saksena : I am not moving it. This gives freedom to impart religious instructions in certain educational institutions outside its working hours. Now, Sir, what is really intended is this, that no minority community shall be compelled to have religious instruction in a religion not his own. That is the real purpose. But although I fully appreciate the purpose, I find that this clause is worded in too general terms and it will preclude the majority community from even imparting any religious instruction to their children because of the minorities. While minorities should not be compelled to have religious instructions against their wishes, they should be provided facilities for having their religious education if the number of their children is sufficient. It should not be forbidden to provide religious education by

[Prof. Shibban Lal Saksena]

the State. Now, after partition of this country, about 30 to 33 crores will be the majority community and if these people want that their children should have education in their religion, they will not be able to have it if this article is passed. This is not fair. What I want is that they should be enabled to have instruction in their religion provided the same facilities they are prepared to afford to children of other denominations, if the number is sufficiently large. This is the second alternative of Mr. Mohd. Ismail's amendment but he has moved the first alternative. The second was a good one. This clause as it stands will really preclude the majority from giving religious education to their children. For example the District Board in Gorakhpur will not be able to teach Gita to children in the schools. I think this should not be so. These big scriptures of the world are really meant to develop the morality and tolerance and they should be taught and I do not wish that anything in the Fundamental Rights should forbid this. I discussed this with Dr. Ambedkar and I have said that clauses (1) and (3) should be deleted, so that this would prevent anybody from forcing any instructions against their wishes, but it would not have precluded the State from imparting instruction in religion to the children of various denominations if the number was sufficient. Clause (3) is absolutely useless. It only says—

"Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours."

But I want that clause (1) also should be deleted because in that case it will be possible for the State to impart instruction in religion, in Gita, in Sermon on the Mount etc., to the children in the schools but not force this instruction on anybody against his wishes. So I want that only clause (2) should remain and it should be permissible to the State to give instruction in religion to children according to their desire and choice and if their guardians permit. This is what I wish but if it is not acceptable. I am not insisting on the deletion of the first part. But clause (3) should be deleted. But I would request Dr. Ambedkar to see that the clause does not forbid the institutions in the State from giving religious instruction. This clause is too wide and should be redrafted to include this.

Mr. Vice-President : Amendment Nos. 642 and 647 are of similar import and should be considered together. No. 642 may be moved.

(Amendment No. 642 was not moved.)

Amendment No. 647—Prof. K. T. Shah.

Prof. K. T. Shah (Bihar : General): Sir, I beg to move—

"That in clause (1) of article 22, after the words "in any educational institution wholly" the words "or partly" be added."

Sir, the clause as amended would be thus—

"No religious instruction shall be provided by the State in any educational institution wholly or partly maintained out of State funds;".

Sir, with all the goodwill in the world I cannot understand the reason for this particular wording that the authors of the original clause have adopted. Their stressing the word 'wholly' is, in my eyes, very intriguing. If they had not said 'wholly' and simply stated 'maintained out of public funds' one could have understood. But if they say that 'religious instruction is to be provided in any institution completely, or wholly maintained out of State funds', then I begin to question what could conceivably be the intention of the Draftsmen in putting forward these particular words. Is it the intention of the Draftsmen,

that if every single pie of expenditure in connection with a given institution is met exclusively out of State funds, then, and then only, should religious instruction be prohibited there?

An Honourable Member : Yes.

Prof. K. T. Shah : If that is your intention, as somebody I hear says, then I am afraid it is impossible to agree; and I venture to submit that the principle enunciated by the opening words would be strangely belied by that wording. If, for instance, there are in the educational institution some scholarships which come from private endowments, so that the total bill is met as to 99 per cent out of State funds, and as to 1 per cent out of these endowments, then it could be said that it is not wholly maintained by the State; and, on the strength of that 1 per cent of endowments or grant or donation, you will have to open the door to the provision of religious instruction. By such religious instruction is, of course, generally meant Denominational Instruction, in a public institution.

Surely that could not have been and that should not be allowed to be the meaning and interpretation of a Section like this. All institutions, or most of them, subject to the exception that is added by way of proviso—to which I will come later in another amendment—all institutions or most of them are maintained wholly or partly out of public revenues, whether they are in the form of the entire bill footed by the State, or in the shape of some grants, or in the shape of fees, etc. received from the public by regular charge: and, as such, no public institutions, as I understand it, would be free from an incursion of any particular Religious instruction of a denomination—and even, may I say of a controversial character.

If you permit one, you will make it impossible to refuse admission to another. That means that in a public institution, any number or any section of people who are being educated there, if only one donor can be found for each to endow a particular scholarship, or to provide for some particular item of expenditure, let us say, library grant, or some item of laboratory equipment, or some small donation for general purposes, and couple it with the condition that Religious Instruction shall be provided therein for that particular sect to which the donor belongs, then I am afraid, your educational institutions will be converted into a menagerie of faiths. There will be unexpected conflicts and controversies; and the very evil which you are out to stop by the opening words, which seem to me to enshrine a sound principle, would be all the more encouraged and supported so to say, by public countenance.

That is a state of things, which I, for one, thought must have been farthest from the intention of the draftsmen. But it seems to me, from the voice I heard a minute ago, that it is not quite as far from the intentions of the draftsmen, as in my innocence I had assumed, and it appears there is some sort of ulterior motive or *arriere pensee* which has guided the draftsmen in introducing the present wording.

Speaking for myself, if not for any considerable section of the House, I would like entirely to dissociate the State in India from any such interpretation as this. If you desire to exclude, as I think is but right, Religious instruction from public institutions maintained from common funds, whether they be the entire expenditure of such institution, or whether they be a part only by way of a grant or by way of fees, or scholarships, or endowments of any kind met by the State out of public revenues, then it would be absurd,—I think it would be inconsistent with the basic principle of this constitution to permit Religious instruction on the excuse that part of the expenditure is met by other than State funds.

The term "state funds" itself is very suspicious in my eyes. What exactly is meant by State funds? The draft, as I have complained more than once, is peculiarly defective in that there is a woeful lack of any definitions, so that

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words can be used in any sense that the occasion may require, or the vagaries of the interpreter might suggest. In the absence of any definition, specially in this connection, one is entitled to put whatever interpretation seems to one to be reasonable, to *have been probably intended by the draftsmen.* And in the light of that assumption, I feel that this clause needs amendment by the addition of the words "*wholly or partly* maintained from public revenues or State funds."

I would not object to the words "state funds" as such so much as I would object to the omission of the word "partly", which I think, must be inserted if this basic principle, if our governing ideal, is to be fully carried out, namely, that no Religious Instruction, which is inevitably of a Denominational character, should be imparted in any public educational institution maintained wholly or partly out of public funds.

I think, Sir, that the intrinsic commonsense, the intrinsic honesty and clearness of this amendment, are so great that no objection would be raised to it, and I trust I would not be disappointed in that respect.

Mr. Vice-President : Amendment No. 643, standing in the name of Sardar Hukam Singh.

Sardar Hukam Singh (East Punjab : Sikh): Sir, I beg to move—

"That in clause (1) of article 22, after the words "shall be provided" the words "or permitted" be inserted."

Sir, I am conscious that the definition of the words "the State" as given in article 7 is very comprehensive and it includes all authorities whether of the Centre or of the States, and it does include local bodies as well. Even then, I feel that the object would not be fulfilled, if we do not add these words "or permitted" as I have proposed. We are going to build a secular State. The Object of this article, so far as I have understood it, is to prohibit all religious instructions in those institutions which are maintained by the State. If the article were to stand as it is, then it would mean that the State would not provide or I might say, any authority would not provide any religious instruction in such institutions. I presume the object is not economic; we are not safeguarding against the State spending funds on imparting religious instructions, but we are providing, rather, against imparting religious education in these institutions. And in that case, our object cannot be served unless we definitely prohibit that in these institutions. Even if no provision is made for the imparting of such religious education, it should also not be permitted. I may say that the staff might take it into its head though the State has not made any provision, the imparting of such instruction, and might start imparting such religious instructions; or a particular teacher, say, might begin in his class the imparting of such instructions. Then, so far as the article stands, it would not be offended against by the action of the teacher or the staff. That object can only be achieved if we definitely ban the imparting of such instructions, when we are making the State a secular one. Therefore, I move that after the words "shall be provided", the words "or permitted" should be added, so that there would be no chance for such religious instruction being imparted in any case, institutions that are to be controlled and subsidised by the State.

Mr. Vice-President : Amendment No. 644, standing in the name of Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man (East Punjab : Sikh): Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 22, the word "educational" be omitted;"

and allow the sub-clause to run as follows:—

"No religious instruction shall be provided by the State in any institution wholly maintained out of State funds:"

and thus keep up the strict neutrality of the State so far as religious matters are concerned, and to maintain the secular character of the State. Sir, I, as a member of the minor ity community, wholeheartedly welcome it and I believe that the State should function along that principle laid down in this article, and that in all spheres of State activity, the members of the minority community shall be left no cause of apprehension or fear and that it will happen very soon. However, Sir, I wonder why this article is permitted to remain so incomplete, because only educational institutions are mentioned here. Probably educational institutions were mentioned because in the popular opinion, they are the only places where religious instructions are given. But I may point out that there are other places or institutions which are completely and wholly maintained by State funds and which in modern times can be used as a vehicle for religious or communal propaganda very effectively. To mention one such vehicle, there is the radio. We all know how effectively it can be used as a platform for religious propaganda day after day. I want that this article should conform to its own logical conclusion and that it should be made complete, and that religious or communal propaganda should be prohibited in all state-owned institutions. Otherwise, to me it looks useless that you should prohibit communal or religious propaganda in one institution but allow it to go full blast in other spheres of activity. For example, take the Army itself; religious and communal propaganda can very easily be imparted there. I want that religious instruction should expressly be prohibited not only in educational institutions but in all institutions which are maintained by the State.

Mr. Vice-President : Amendment No. 645 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (1) of article 22, the words "by the State" be omitted."

The object of this amendment is to remove a possibility of doubt that might arise. If the words "by the State" remain in the draft as it now stands, it might be construed that this article permits institutions other than the State to give religious instruction. The underlying principle of this article is that no institution which is maintained wholly out of State funds shall be used for the purpose of religious instruction irrespective of the question whether the religious instruction is given by the State or by any other body.

Mr. Tajamul Husain : Mr. Vice-President, Sir, I move:

"That in clause (1) of article 22, the words "by the State" and the words "wholly maintained out of State funds" be deleted."

Clause (1) of this article reads thus:—

"No religious instruction shall be provided by the State in any educational institution wholly maintained out of State funds."

This means that religious instruction can be provided in any educational institution which is partly maintained out of State funds or which are not maintained out of State funds at all. The result would be that all private and aided schools and colleges and *pathshalas* and *maktabs* will impart religious instruction to boys and girls. I submit that this should not be allowed in a secular State. Much has been said on this subject by the previous speaker and I do not wish to go into detail, but the only thing I would like to say is, what is the use of calling India a secular State if you allow religious instruction to be imparted to young boys and girls? By this article you do not prevent if parents want to give religious instruction to their children—they are at liberty to do so at home, and nobody will object to it. In fact, every parent gives his child education well before he goes to school; generally what

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happens in this country is that all religious instruction is given to a boy before he attends the school; and that should be done, it is the duty of the parents to educate their children according to their own ways. But I object to a public institution, whether maintained by Government or partly maintained by Government, imparting religious instruction.

With these words, I commend my amendment to the House.

Mr. Vice-President : Amendment No. 648 is disallowed as being verbal.

(Amendment Nos. 649, 650 and 652 were not moved.)

Amendment No. 651 is disallowed as being verbal.

There is amendment No. 653 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That at the end of the proviso to clause (1) of article 22, the following be inserted:

'and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution.' "

The proviso as amended would read—

"Provided that nothing in this clause shall apply to an educational institution which is administered by the State but has been established under an endowment or trust which requires that religious instruction shall be imparted in such institution *and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution."*

I would refer in this connection also to some of the arguments that I advanced previously, namely, that is could and should not be the intention or meaning of this proviso, that anybody who endows, say, a Chair, a Library, a Laboratory, or some department in a College or School, should be able to say that Religious Instruction should be provided in his behalf or of his type, even though his Trust or Endowment is not enough to meet the entire expenditure of that institution.

It would be a simple proposition, as I understand this proviso to the clause as it stands, for anybody to make a Trust or Endowment, sufficient, let us say, to meet part of the cost, *e.g.,* building and furniture; then divest himself of the care and responsibility of managing that institution, hand it over to the State, earn cheap immortality and the title of being a munificient donor, and then ask the State to carry on the institution and also to provide Religious instruction therein, negativing the principle on which the clause to which this is a proviso was founded.

The idea, as I have understood this clause, would be defeated and the clause turned into a grotesqueness I think, if such should be the result. Perhaps, it was not intended to be so twisted out of the intention. My amendment, therefore only seeks to make it clear and explicit.

Even so, I am, for my part, not entirely satisfied that any excuse should be left to provide Religious Instruction of a particular character in any public institution managed by the State, and of which only a part, or even the whole of the expenditure is coming from the grant, Trust fund or endowment that a donor has made.

This will be the negation, I repeat, of the basic principle on which this clause is based. The omission of the words "by the State", under an amendment just moved by the Chairman of the Drafting Committee would, if adopted—and I suppose it *will* be adopted—make the position still more complicated, unless it be that by a consequential amendment the authorities themselves would see that the words "by the State" here are also omitted.

I do not know that they would be omitted here. I am just suggesting a possibility or conveying a hint which may reconcile, to some extent, the main clause with the proviso.

Whether or not these words are deleted from the main clause, and whether or not these words are retained in this proviso, the objection I am urging will apply all the same. I hold that it should not be open to anybody to make a trust for an educational institution in the first instance and then hand over its management to the State and demand that in that institution, simply on the ground that the founder has been providing the capital or recurring cost of that institution, there shall be religious instruction of the type favoured by him or professed by him.

I still believe that it could not be really the intention of the authors of this clause; and this proviso which would permit any such irregularity or exception should be made explicit in the way I am trying by this amendment to do. I trust that commonsense, if not legal sense, will assert itself; and the substance, if not the actual form, of my amendment will be accepted.

(Amendment Nos. 654, 655 and 657 were not moved.)

Mr. Vice-President: Amendment No. 656 is disallowed as being verbal.

Shri H. V. Kamath (C.P. and Berar : General) : Mr. Vice-President, I move—

"That in clause (2) of article 22, the words 'recognised by the State or' be deleted."

I move this amendment with a view to obtaining some clarification on certain dark corners of these two articles—articles 22 and 23. I hope that my learned Friend Dr. Ambedkar will not, in his reply, merely toe the line of least resistance and say "I oppose this amendment", but will be good enough to give some reasons why he opposes or rejects my amendment, and I hope he will try his best to throw some light on the obscure corners of this article. If we scan the various clauses of this article carefully and turn a sidelong glance at the next articles too, we will find that there are some inconsistencies or at least an inconsistency. Clause (1) of article 22 imposes an absolute ban on religious instruction in institutions which are wholly maintained out of State funds. The proviso, however, excludes such institutions as are administered by the State which have been established under an endowment or trust—that is, under the proviso those institutions which have been established under an endowment or trust and which require, under the conditions of the trust, that religious instruction must be provided in those institutions, about those, when the State administers then, there will not be any objection to religious instruction. Clause (2) lays down that no person attending an institution recognised by the State or receiving aid out of State funds shall be required to take part in religious instruction. That means, it would not be compulsory. I am afraid I will have to turn to clause 23, sub-clause (3) (a) where it is said that all minorities, whether based on religion, community or language, shall have the right to establish and administer educational institutions of their choice. Now, is it intended that the institutions referred to in the subsequent clause which minorities may establish and conduct and administer according to their own choice, is it intended that in these institutions the minorities would not be allowed to provide religious instruction? There may be institutions established by minorities which insist on students' attendance at religious classes in those institutions and which are otherwise unobjectionable. There is no point about State aid, but I cannot certainly understand why the State should refuse recognition to those institutions established by minorities where they insist on compulsory attendance at religious classes. Such interference by the State I feel is unjustified and unnecessary. Besides, this conflicts with the next article to a certain extent. If minorities have the right to establish and administer

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educational institutions of their own choice, is it contended by the Honourable Dr. Ambedkar that the State will say: 'You can have institutions, but you should not have religious instructions in them if you want our recognition'. Really it beats me how you can reconcile these two points of view in articles 22 and 23. The minority, as I have already said, may establish such a school for its own pupils and make religious instruction compulsory in that school. If you do not recognise that institution, then certainly that school will not prosper and it will fail to attract pupils. Moreover, we have guaranteed certain rights to the minorities and, it may be in a Christian school, they may teach the pupils the Bible and in a Muslim school the Koran. If the minorities, Christians and Muslims, can administer those institutions according to their choice and manner, does the House mean to suggest that the State shall not recognize such institutions? Sir, to my mind, if you pursue such a course, the promises we have made to the minorities in our country, the promises we have made to the ear we shall have broken to the heart. Therefore I do not see any point why, in institutions that are maintained and conducted and administered by the minorities for pupils of their own community the State should refuse to grant recognition, in case religious instruction is compulsory. When once you have allowed them to establish schools according to their choice, it is inconsistent that you should refuse recognition to them on that ground. I hope something will be done to rectify this inconsistency.

Shri Jaspat Roy Kapoor : Sir, I beg to move:

"That clause (3) of article 22 be omitted."

My reasons are four. Firstly, this clause is in conflict with clause (1) of article 22 which reads: "No religious instruction shall be provided in any educational institution wholly maintained out of State funds:" I am of course reading clause (1) as it will stand after the amendment moved by Dr. Ambedkar is incorporated. So that, while clause (1) lays down that no religious instruction shall be imparted in any institution which is maintained wholly by the State, clause (3) lays down that such religious instruction can be imparted out of working hours. Obviously, therefore, these two are in conflict with each other. If clause (1) is to remain, clause (3) must go. Clause (3) cannot stand in the face of clause (1).

My second reason is that the retention of clause (3) is likely to lead to conflict between the different religious denominations, because different religious denominations may claim the right to impart religious instruction to their pupils in any institution at the same time and in the same premises. That will certainly lead to a good deal of conflict. The convenient time for imparting religious instruction, after working hours, is very limited and several religious denominations may like to impart religious instruction to their pupils in the same premises and at the same convenient hour. This will place the head of the educational institution concerned in a very embarrassing position. He may be in a dilemma as to whom he should grant permission and to whom not. If a particular denomination is refused permission it might make a very serious grievance of it and, even may, in order to exercise the fundamental right granted to that community, seek forcible entry into that institution. This is likely to lead to communal and religious riots. The retention of this clause being full of mischievous potentialities, it must be deleted.

My third reason is that the management of a denominational institution may not like that religious instruction in a different religion from its own should be imparted there. A Muslim school which may perhaps be run within the precincts of a mosque would surely not like religious instruction to Hindus being imparted there in Vedic Dharm. So also, an educational institution run by Arya Samajists would surely not like religious instruction in Koran

being imparted in the premises of that institution. For this reason also this clause must go.

My fourth reason is that it is absolutely unnecessary in view of clause (2). Clause (2) already provides that religious instruction can be imparted by the management of an educational institution provided of course the students agree to it or if they are minors their guardians agree to it. Such instruction can be provided not only during working hours, but even outside working hours. So it is unnecessary in view of clause (2). For these reasons I submit that clause (3) should be deleted.

Mr. Mohamed Ismail Sahib : Mr. Vice-President, I beg to move:

"That in clause (3) of article 22, for the words 'providing', the words 'being permitted to provide' be substituted and, after the words 'educational institution', the words 'in, or' be inserted."

Clause (3) of article 22 refers mainly to institutions envisaged in clause (1) thereof. Therefore I think that instead of the word 'providing', the words "being permitted to provide" will be more appropriate. I say this because, the institutions being State institutions, permission ought to be sought for and given for making any provision for imparting religious instruction in the schools. A religious denomination or community cannot go straightaway and say: "We are providing religious instruction in such and such schools". That is not possible. Therefore to make it more intelligible and reasonable, I want the substitution of the word "providing" by the words "being permitted to provide".

Then, Sir, I want the insertion of the words "in, or" after the words "educational institution" with these words the clause will read as follows:—

"Nothing in this article shall prevent any community or denomination from being permitted to provide religious instruction for pupils of that community or denomination in an educational institution in or outside its working hours."

I want that permission should be given to a community for providing religious instruction in as well as outside working hours. It is only with the permission of the authorities of the institution that such provision will be made. Therefore, if the authorities find it practicable to include religious instruction inside the working hours, there is no harm. Such provision is really to be made in the interests of the pupils as a whole. As I said, this clause 23, has a bearing on clause (1) which deals with State institutions. Now, Sir, what is the objection to State institutions banning religious instruction altogether and for all time? The situation is this: Now, almost all the primary schools will become State institutions shortly and if no religious instruction is to be given in State schools, the position will be that up to fourteen or fifteen years of age boys and girls shall have no opportunity of getting religious instruction. To say that religious instruction should be given in their own homes or outside school hours is an impracticable proposition. Educational experts will readily agree that giving religious instruction outside school hours will be a burden which should not be placed on pupils of tender age. Moreover, we know what sort of instruction can be given outside school hours. Therefore, Sir, this important matter of religious instruction ought not to be treated in this step motherly fashion. People talk of trouble arising on account of religion. As I have been saying more than once, it is not really religion that is the source of trouble. It is the misunderstanding of religion that is the source of trouble. The point is that pupils must be made to understand what religion really is and for that purpose you must not leave them to learn their religion here and there in the nooks and corners of a village or a city. If religious instruction is to be in the interests of the pupils as well as the State, it should be given in public educational institutions where the followers of every religion will do their best to present their religion in the best light. This can

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be done, Sir, only if religious instruction is allowed to be given in the public State-owned institutions, where people will compete with each other to show the best of their religions to the world and thereby undesirable rivalries, competitions, bickerings and heart burnings will really be eliminated. Sir, the second world war has turned people back to religion. Many European writers say that because people went away from religion, discarded religion, because they did not allow religion to be imparted to their children in their tender age, this calamity happened. Therefore, many political writers themselves are now stressing the need for religious instruction in State schools; moreover, we find that several constitutions in European countries have provided for the compulsory imparting of religious instruction in their respective countries. Therefore, I say not only that it is not harmful but I say that it is necessary, that it is very essential that every pupil must be taught his or her own religion in their proper age and that can be done only when they are in the primary schools. Therefore, when all these primary schools are going to be State schools, the State should not ban religious instruction altogether. As I said in a previous amendment, this must be left to the Parliament. There may be practical difficulties with regard to certain communities but these difficulties must be left to the Parliament to be dealt with according to circumstances. Because there may be difficulties for some people, certain other communities should not be deprived of their right of imparting religious instruction to their children. I once again want to stress the fact that it is in the interest of the State to give a grounding to children in religion. What is wanted for the stability of society as well as the State is moral grounding, moral background, and the only way to give this moral background is through religion. The world has so far failed in its experiences to find another substitute for religion. Even the hardboiled politicians are now turning their faces towards religion. When the whole world is returning to religion, we are here discarding religion, we belonging to people who think that religion is an inalienable part of our lives. If we want to avoid all the distressing experiences that the West has experienced, we should allow religious instruction to be imparted to pupils in the primary schools. If this is done, everything will be well and there will be happiness for all. That is why I say that permission should be given at least to the religious communities to arrange for religious instruction in or outside school hours as the case may be according to circumstances. That may be left to the future legislature.

(Amendment No. 663 was not moved.)

Mr. Vice-President : Amendment No. 664. Professor K. T. Shah.

Prof. K. T. Shah: Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 22, for the words 'outside its working hours' the following be substituted:

'maintained by that community from its own funds provided that no educational institutions, nor any education or training imparted therein shall be recognised unless it provides instruction or training in courses laid down for public instruction in the regular system of education for the country and complies in all other respects with methods, standards, equipment and other requirements of the national system of education.' "

Sir, the whole group of clauses lays down a principle of "no religious instruction in public educational institutions" and then seeks, as it seems to be the case, throughout this Chapter to find holes and crevices by which it can creep in like a thief in the dark, and undo the very basis and foundation of the structure we are seeking to erect.

I am free to confess that, apart from the variety of exceptions, exemptions or limitation, all sought to be imposed by this article upon its basic principle,—there is the difficulty of ambiguity of expression, the lack of clarity or insufficiency

in the terms used, which makes it very difficult to devise an amendment, which might be effective in substance as well as in form, and bring out the idea more clearly and expressly than the draftsman seems to have done.

I mention one instance of ambiguity in terms, which, unfortunately, occurs also in the amendment which I am proposing, though there is, I think, no ambiguity in the term used in my amendment containing the expression 'State funds'. The term fund, as I have understood it, means in common parlance, and I venture to submit, even in legal technical terminology, not revenue or recurring income. That term means something static, something accumulated and existing, something that is what the lawyers would call 'corpus', even if they understand the Latin term in the Latin sense, 'Revenue' is something different.

Now take the clause about Institutions maintained from State funds. I for one find it very difficult to understand what 'funds' are meant here as intended by the draftsman for the maintenance of institutions. I am, of course, not anxious to read Bhagvat before buffaloes. But I must say that in trying to understand the meaning of this article, I feel it necessary to at least expose my own difficulties and handicaps in understanding precisely the terminology used, and seek clarification from those who have the handling, the making, and drafting of this Constitution in their hands.

I make no secret of the fact that I am against public educational institutions being used for providing Religious Instruction in this country, or any country, but in this country particularly, because of the variety of sects and denominations. They are, of course, called each a religion; but they very often forget the basic truth of all religons, and exalt each its own particular brand or variety of it, as any advertizer in the market lauds his own wares. But even assuming that that is permissible, outside office hours so to say, outside the normal school hours, care must at least be taken that that is not done at the expense of the normal education, and all the requirements of that education and training, in the shape of building, staff, equipment, standards, methods etc.

Now, it is by no means clear, at least in this clause (3), as it stands, that even if instruction is permitted or suffered to be provided outside the normal hours, whether that may be done at the expense of the ordinary curriculum. That will have to be, I take it, enforced in every school, whether maintained by public funds, or not. I insist, therefore, in this Amendment, that whoever wishes to provide such instruction, whatever community desires to provide such instruction, may do so, if you so agree, by its own funds. But they must be sufficient to meet the full cost; and in the full sense of the term, it must be after the school hours, in such a manner that there is no prejudice whatsoever of the ordinary curriculum prescribed standards of attainment, methods of instruction, equipment, etc.

This, in my opinion, is liable very seriously to be sacrificed and endangered if you do not introduce some such safeguard as I am seeking to make by my amendment. Our only weapon is that, if any community so desires to insist upon the pre-eminence if not exclusive importance being given to religious instruction, and is prepared to spend monies thereafter, let it do so. But the State should certainly not recognise any education given in such an institution, and in training equipment provided by that institution, unless it conforms to the public standards, and public requirements of such education and training being given up to a prescribed degree.

I have some experience of educational institutions trying to ignore, in one respect or another, one or all of these requirements. Those who have had experience of inspecting these institutions and reporting upon them to the appropriate authorities will realize what I mean when I say that the greatest

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difficulty lies in keeping these institutions up to a given mark, and to see from time to time that these standards are maintained.

In countries where a common standard prevails, this difficulty also exists. But in countries where there are conflicting ideals, namely secular education, material considerations in professional training and technical training, and at the same time there is, so to say, the demand of specialized religious instruction, I am afraid one or the other of these may suffer in order that the former or the latter may succeed. I feel it is imperative to require that not only shall all the funds for the provision of such instruction be supplied by the community which desired to provide it, but in addition, on pain of its education being not recognized, on pain of its degrees, diplomas and certificates not being accepted as sufficient qualification for its alumini when they seek any post or office, they shall see to it that the standards, equipment, buildings, staff and other requirements of the national system of education, and its code of regulations are fully complied with. If that is done, then probably the great evil which I find in the provision of religious instruction in a country like this would be mitigated, if not eliminated altogether.

(Amendment No. 665 was not moved.)

Mr. Vice-President : The clause is now open for general discussion.

Shrimati Renuka Ray (West Bengal : General): Mr. Vice-President, Sir, while supporting this article, there are one or two points on which I should like some elucidation. Prof. K. T. Shah has brought forward a point which really needs to be cleared up. Part (1) of this article says: "No religious instruction shall be provided in any educational institution wholly maintained out of state funds". There is likelihood of this being mis-interpreted in the future, so as to nullify its very object. As he has pointed out even if a small donation is paid to a public school, it can be held that such a school is not wholly maintained out of State funds, and therefore denominational religious instruction may be given. I hope that when Dr. Ambedkar speaks, he will clear up this point because it is a very important one. If such interpretation can be given then it is necessary to have safeguards against it.

In this country we have seen the exploitation, and the prostitution of what we call religion and we have seen to our bitter cost what is done in the name of denominational religion. It has not only led to the dis-memberment and division of our country, but it has also led to the worst horrors that could be perpetrated in the name of religion. Now, when we are building for the future, we must build in such a manner that we are able to do so untrammelled by the legacy of the past. The only real way in which this could be done is to see that the next generations are educated in such a manner that they are not actuated by motives that divide and disintegrate man from man, but that the religion of humanity is much greater to them than religious dissensions on a denominational religious basis. If that is to be so, we must be very careful, now that we are building up the Constitution for the future, that there shall not be in the fundamental rights any kind of confusion as to the kind of instruction that is to be given at least in those institutions that are maintained out of public funds. If we use this word "wholly", there is likely to be this confusion that has been already pointed out and I would like to hear from Dr. Ambedkar if it is possible for him either to accept this amendment or at least to assure the House that no such interpretation will be possible in the future.

I would again urge that he should accept in particular the amendment for the deletion of clause (3) which has been moved by Mr. Jaspat Ray Kapoor, because as he has pointed out there is no doubt that if this clause remains, there is likelihood that in a certain area where there may be a small number

of schools or only one school, a fight between the various denominations as to which particular type of religious instruction should be given out of school hours may ensue. Therefore, it is much better that clause (3) be deleted from this article.

I am sure that all those in this House and the country outside will agree with me that above all things, it is necessary that the instruction that is given to the citizens of the future shall be such that the idea of a Secular State in which all citizens are equal comes into being, and the provision for this adopted in our Constitution becomes a living reality. This can only be done if education which is the very basis on which we build our Society is so imparted to the young that they do not learn to realise the distinctions which separate man and man, but rather to learn that the underlying unity of humanity is more fundamental and the basis of religion to which they must adhere.

Shri V. I. Muniswami Pillai : (Madras : General): Mr. Vice-President, Sir, when we are on the very important work of evolving a secular State for this country, I feel that the second clause in article 22 is a very important one and I welcome it.

Sir, it will be in the knowledge of this sovereign body that certain institutions in the past, due to the aid that was given by the former Government, under the garb of imparting education to the masses, have taken a different stand. This has led to masses of the unfortunate communities embracing a religion that was not their own. This article makes it clear that any educational institution receiving aid from the State should not indulge in matters of religious education. This mostly helps those unfortunate communities that have fallen a prey in this respect.

Sir, further it goes to say that in the case of a minor, unless the parent has given his consent, he should not be given religious instruction or required to attend any religious worship. I feel, Sir, it is not always possible for the parents to give this consent and the institutions that are working in the rural areas and outskirts of towns will not get the genuine consent of the parents in this respect. This important duty of seeing whether the consent given is genuine and true, falls upon the local authorities who will have to verify and create agencies so that the students or pupils that are attending any institutions of certain denominations are not converted to other religions. This is my emphatic plea and I am hopeful that the local Governments will take care about what is said about consent. I entirely welcome the provisions of this article 22 of the Constitution.

Shri V. S. Sarwate : [United States of Gwalior-Indore-Malwa (Madhya Bharat)]: Mr. Vice-President, Sir, I rise to support this article as it stands except clause (3). As I see it, I think articles 20, 21 and 22 are to be read together. Certain propositions evolve out of them. The first is that the State is secular and it shall not impart any religious education in schools maintained by itself. Further, clause (1) of article 22 lays down that the States hall not give any religious instruction in such schools as are entirely maintained out of State funds and these shall not be allowed to give religious education. This is the first proposition. But, it does not follow that the State either bans religion or despises it. Its attitude is perfectly neutral. Article 20 allows any religious denomination to have its own schools. As I read article 21, I understand it to mean that if any particular community wants to tax itself for the purpose of imparting religious education, the Government would help it by undertaking to collect such a tax. What is done by article 21 is this: that the State will not force anybody to pay such a tax. But, it may collect and pay over to such communities, if the communities agree to pay a particular tax for the purpose of imparting religious education. As I see from the word ‘wholly’ I do think that if the State wants to partially aid any school which

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is imparting religious instructions, it is enabled to do so and I think it is right. If any community does maintain a school and imparts particular religious education and it deserves help from the State, the State should be in a position to give such aid. Therefore, the word 'wholly' is necessary and I oppose the other amendment which has been moved inserting the words 'or partly'. One need not be obsessed by what happened in the past. I know and I have read in schools and colleges where certain religious education was imparted. I am grateful for the teachings which I received there but there were certain objectionable features. In one educational institution there was a religious instruction imparted in the first hour and if we did not attend in that hour, we were marked absent for the rest of the periods. In another college where I learnt, it was necessary that we attended a religious worship and if we did not attend it, we were subjected to certain fines. These were objectionable features and these are to be removed. They are removed by clause (2). Nobody is required to attend such religious worship or to attend such classes where religious education is given. But it does not prohibit the State from giving aid to such institutions; what is only meant is nobody against his will will be required or forced and compelled to receive such education or attend such religious worship, and I think this is a very salutary provision and also the permission which is given to the State to aid such institutions is also necessary. Otherwise I believe certain very good institutions in the country would suffer.

Kazi Syed Karimuddin : Mr. President, Sir, in my opinion the provisions of article 22 except clause (3) are very salutary and I really do not understand how these provisions have been opposed by Mr. Ismail from Madras. In the state of things as they stand today, in my opinion, it is much better for the minorities to avoid religious controversies, conflicts and religious dogmas to be taught in the schools and we have seen in the past, as several speakers the other day have said, that in Missionary schools people were persuaded to have conversion form one faith to the other because of the undue influence or monetary gains. Now in a secular State, where religion will be a personal matter, my submission is that in educational institutions wholly managed or wholly aided by the Government or State, religious education should not be provided. It is said, Sir, that unless religious education is given in the schools financed by the State it would not be possible for the minorities to be educated in their religion. My submission is that if the communities want that their children should be educated or should be given religious education, then it will be their duty to educate their children in *Pathsalas* or schools. The amendment moved by Professor Shah in my opinion cannot be acceptable at the present stage. His amendment is that no religious instruction should be provided by the State in any educational institution wholly or partly maintained out of public funds. Today as things stand in India there is Aligarh University, there is Banaras University and there are several colleges run by the Christian Missionaries which are aided by the Government. If his amendment is accepted today there will be hundreds and thousands of institutions which will be closed down immediately. Let us proceed very cautiously. For that the provision in clause (2) is very salutary. In aided schools or institutions in which there will be no compulsion on the students to take a particular religious education. I think the opposite point of view can be partially met by clause (2). It has also been stated that the word 'educational' should be removed from clause (1) and it is stated that Radios may be used to propagate and teach a particular religion. This is a State which has been declared to be secular and if a secular State decides to propagate a particular religion through radios, it will not be worth the name that it is a secular State. In my opinion it is

more a question of administrative policy and the word 'educational' need not be taken away from clause (1).

Sir, it has been stated that religious education should be given at home. I also oppose this. In aided schools run by communities religious education can be given and the amendment of Mr. Tajamul Husain cannot be accepted that religious education should be given at home. I contemplate a position that if parents are atheists—for instance Mr. Tajamul Husain by another amendment demands that the people should have no name and they should not have any particular dress—in that case, there will be no religious education in their houses; and if people are only to be known by numbers and not by names, then it will be very difficult for them to be educated or instructed in religious theology. Therefore my submission is that article 22 as it stands is not to the disadvantage or detriment of the minorities.

But I really object to clause (3). What has been given in clauses (1) and (2) has been taken away in clause (3). It says—

> "Nothing in this article shall prevent any community or denomination from providing religious instruction for pupils of that community or denomination in an educational institution outside its working hours."

But who would be responsible for imparting the religious education in such institutions? Any outside agencies who would be giving religious instructions to the boys may not be acceptable to the authorities and moreover much mischief will be done if this religious education is given in outside hours by people who are irresponsible and by people who will be recklessly teaching boys that may be to the detriment of the nation. Therefore I support article 22 as it stands with the deletion of clause (3).

Shri M. Ananthasayanam Ayyangar : Sir, I support the article as it stands without clause (3). Instead of Professor Saksena's amendment, I would urge that the House may accept amendment No. 661. Mr. Saksena's amendment originally as it stands is that both clauses (1) and (3) of this article may be omitted but when moving the amendment he gave up the portion relating to clause (1) and pressed his amendment in regard to clause (3). Instead of that amendment No. 661 relating exclusively to the deletion of clause (3) may kindly be accepted. Sir, in supporting this clause in this article, I am very much pained that religious instruction is not to be taught in any school in a country which is full of religion. Inside our schools, we may refuse to teach religion to the children. But outside the schools we cannot forget our denominations. Religion, according to me, is the basic foundation of any society; all morality, and all good principles have to be traced to religion. But situated as we are, it is unfortunate that we are not able to come to any arrangement regarding the teaching of religion to our children in our schools.

Sir, there are two sets of amendments moved regarding this article. One requires that various provisions for the teaching of religion in the schools must be made for all the children. Another set of amendments wants that the stringent provisions of today against the teaching of religion should be made even tighter, and that even in cases where educational institutions are not exclusively run by the State and where the State does not maintain the institution wholly, no religious instructions should be imparted, and that even in institutions which are partly aided by the State, or are recognised by the State, religion ought not to be taught. That is another set of amendments. I, Sir, feel that neither the one nor the other set is possible in the circumstances in which we are situated today. We are pledged to make the State a secular one. I do not, by the word 'secular', mean that we do not believe in any religion, and that we have nothing to do with it in our day-to-day life. It only means that the State or the Government cannot aid one religion or give

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preference to one religion as against another. Therefore it is obliged to be absolutely secular in character, not that it has lost faith in all religions. Not even members incharge of the Government have lost faith in religion. I am sure none of us is to that extent an iconoclast or non-believer. We all do believe in some religion or other, including those who have spoken and taken part in the deliberations about this article in the Constitution. But it is regrettable that we have not been able to evolve a universal religion, a religion where the religions practice need not cloud the issues. We all believe in the existence of one God, in prayer, in meditation and so on. We all believe in the ultimate surrender to Him and that by sacrifice and service alone we can hope to realise Godhead. These are common to all religions. The Bhagavat Gita lays down that by sacrifice and service we have to see Godhead inhumanity, that service to humanity is the essence of God. I will not go into all the details; suffice it to say that I regret that in the circumstances in which we are, we are not able to teach religion to our children. If we introduce the teaching of one religion, even if there is only one boy belonging to another religion in that school, we have to make provision for the teaching of his religion also. And we know very well that even under one religion there are sects and subsects. There are Hindus of various sects. And then there is Jainism, Buddism, Christianity, and there are the Muslims, the Parsis and so on. Therefore it is not possible, it is physically impossible for the State to make provisions for the teaching of all the religions. The only thing, under the circumstances that we can do is to avoid religious instructions in State-aided schools. If a small contribution is made by some agency and religious instruction is provided, it will all the same, be controlled by the local authority, and if the teaching is rabid, and if hatred is being taught in the school, certainly the grant can be withheld and other measures adopted to stop that kind of thing. It is not obligatory upon the State to give its grants irrespective of the way in which the educational institution is being run. So we need not think that religious instruction will be given in an institution where the major portion is contributed by the State and a small contribution—may be a farthing—is contributed by some other agency. We need not make it part and parcel of the Constitution here. I am sure no government would contribute 99 per cent and allow an educational institution to impart religious education because 1 per cent comes from some other source. Therefore, we need not accept either the one set of amendment or the other set, but confine ourselves to amendment No. 661 and amendment No. 645.

Mr. Vice-President : Much as I would like to accommodate other members, for whose opinions I have great respect, I find we have already had a number of speakers. Twelve amendments have to be put to vote. Nine amendments have been moved and I think six speakers have already spoken. I feel this article has been discussed sufficiently. I now call on Dr. Ambedkar to speak.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, I want to get one or two points cleared. I am not going to make a speech. I want only to get one or two points explained.

Mr. Vice-President : I have already given my ruling. I cannot allow any further speeches, especially as you and I belong to the same Province.

Pandit Lakshmi Kanta Maitra : Belonging to the same province has nothing to do with this. I only wanted to have clarification on one point.

Mr. Vice-President : My decision is final, Panditji. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, out of the amendments that have been moved, I can persuade myself to accept only

amendment No. 661 moved by Mr. Kapoor to omit sub-clause (3) from the article, and I am sorry that I cannot accept the other amendments.

It is perhaps, desirable, in view of the multiplicity of views that have been expressed on the floor of the House to explain at some length as to what this article proposes to do. Taking the various amendments that have been moved, it is clear that there are three different points of view. There is one point of view which is represented by my friend Mr. Ismail who comes from Madras. In his opinion, there ought to be no bar for religious instruction being given. The only limitation which he advocates is that nobody should be compelled to attend them. If I have understood him correctly, that is the view he stands for. We have another view which is represented by my friend Mr. Man and Mr. Tajamul Husain. According to them, there ought to be no religious instruction at all, not even in institutions which are educational. Then there is the third point of view and it has been expressed by Prof. K. T. Shah, who says that not only no religious instruction should be permitted in institutions which are wholly maintained out of State funds, but no religious instruction should be permitted even in educational institutions which are partly maintained out of State funds.

Now, I take the liberty of saying that the draft as it stands, strikes the mean, which I hope will be acceptable to the House. There are three reasons, in my judgment, which militate against the acceptance of the view advocated by my friend Mr. Ismail, namely that there ought to be no ban on religious instructions, rather that religious instructions should be provided; and I shall state those reasons very briefly.

The first reason is this. We have accepted the proposition which is embodied in article 21, that public funds raised by taxes shall not be utilised for the benefit of any particular community. For instance, if we permitted any particular religious instruction, say, if a school established by a District or Local Board gives religious instruction, on the ground that the majority of the students studying in that school are Hindus, the effect would be that such action would militate against the provisions contained in article 21. The District Board would be making a levy on every person residing within the area of that District Board. It would have a general tax and if religious instruction given in the District or Local Board was confined to the children of the majority community, it would be an abuse of article 21, because the Muslim community children or the children of any other community who do not care to attend these religious instructions given in the schools would be none-the-less compelled by the action of the District Local Board to contribute to the District Local Board funds.

The second difficulty is much more real than the first, namely the multiplicity of religions we have in this country. For instance, take a city like Bombay which contains a hetrogeneous population believing in different creeds. Suppose, for instance, there was a school in the City of Bombay maintained by the Municipality. Obviously, such a school would contain children of the Hindus believing in the Hindu religion, there will be pupils belonging to the Christian community, Zoroastrian community, or to the Jewish community. If one went further, and I think it would be desirable to go further than this, the Hindus again would be divided into several varieties; there would be the *Sanatani* Hindus, Vedic Hindus believing in the Vedic religion, there would be the Buddhists, there would be the Jains—even amongst Hindus there would be the Shivites, there would be the Vaishnavites, Is the educational institution to be required to treat all these children on a footing of equality and to provide religious instruction in all the denominations? It seems to me that to assign such a task to the State would be to ask it to do the impossible.

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The third thing which I would like to mention in this connection is that unfortunately the religions which prevail in this country are not merely non-social; so far as their mutual relations are concerned, they are anti-social, one religion claiming that its teachings constitute the only right path for salvation, that all other religions are wrong. The Muslims believe that anyone who does not believe in the dogma of Islam is a *fakir* not entitled to brotherly treatment with the Muslims. The Christians have a similar belief. In view of this, it seems to me that we should be considerably disturbing the peaceful atmosphere of an institution if these controversies with regard to the truthful character of any particular religion and the erroneous character of the other were brought into juxtaposition in the school itself. I therefore say that in laying down in article 22 (1) that in State institutions there shall be no religious instruction, we have in my judgment travelled the path of complete safety.

Now, with regard to the second clause I think it has not been sufficiently well-understood. We have tried to reconcile the claim of a community which has started educational institutions for the advancement of its own children either in education or in cultural matters, to permit to give religious instruction in such institutions, notwithstanding the fact that it receives certain aid from the State. The State, of course, is free to give aid, is free not to give aid; the only limitation we have placed is this, that the State shall not debar the institution from claiming aid under its grant-in-aid code merely on the ground that it is run and maintained by a community and not maintained by a public body. We have there provided also a further qualification, that while it is free to give religious instruction in the institution and the grant made by the State shall not be a bar to the giving of such instruction, it shall not give instruction to, or make it compulsory upon, the children belonging to other communities unless and until they obtain the consent of the parents of those children. That, I think, is a salutary provision. It performs two functions....

Shri H. V. Kamath : On a point of clarification, what about institutions and schools run by a community or a minority for its own pupils—not a school where all communities are mixed but a school run by the community for its own pupils?

The Honourable Dr. B. R. Ambedkar : If my Friend Mr. Kamath will read the other article he will see that once an institution, whether maintained by the community or not, gets a grant, the condition is that it shall keep the school open to all communities. That provision he has not read.

Therefore, by sub-clause (2) we are really achieving two purposes. One is that we are permitting a community which has established its institutions for the advancement of its religious or its cultural life, to give such instruction in the school. We have also provided that children of other communities who attend that school shall not be compelled to attend such religious instructions which undoubtedly and obviously must be the instruction in the religion of that particular community, unless the parents consent to it. As I say, we have achieved this double purpose and those who want religious instruction to be given are free to establish their institutions and claim aid from the State, give religious instruction, but shall not be in a position to force that religious instruction on other communities. It is therefore not proper to say that by this article we have altogether barred religious instruction. Religious instruction has been left free to be taught and given by each community according to its aims and objects subject to certain conditions. All that is bared is this, that the State in the institutions maintained by it wholly out of public funds, shall not be free to give religious instruction.

Pandit Lakshmi Kanta Maitra : May I put the honourable Member one question? There is, for instance, an educational institution wholly managed

by the Government, like the Sanskrit College, Calcutta. There the *Vedas* are taught, *Smrithis* are taught, the *Gita* is taught, the *Upanishads* are taught. Similarly in several parts of Bengal there are Sanskrit Institutions where instructions in these subjects are given. You provide in article 22(1) that no religious instruction can be given by an institution wholly maintained out of State funds. These are absolutely maintained by State funds. My point is, would it be interpreted that the teaching of *Vedas*, or *Smrithis*, or *Shastras* or *Upanishads* comes within the meaning of a religious instruction? In that case all these institutions will have to be closed down.

The Honourable Dr. B. R. Ambedkar : Well, I do not know exactly the character of the institutions to which my Friend Mr. Maitra has made reference and it is therefore quite difficult for me.

Pandit Lakshmi Kanta Maitra : Take for instance the teaching of Gita, Upanishads the Vedas and things like that in Government Sanskrit Colleges and schools.

The Honourable Dr. B. R. Ambedkar : My own view is this, that religious instruction is to be distinguished from research or study. Those are quite different things. Religious instruction means this. For instance, so far as the Islam religion is concerned, it means that you believe in one God, that you believe that *Pagambar* the Prophet is the last Prophet and so on, in other words, what we call "dogma". A dogma is quite different from study.

Mr. Vice-President: May I interpose for one minute? As Inspector of Colleges for the Calcutta University, I used to inspect the Sanskrit College, where as Pandit Maitra is aware, students have to study not only the University course but books outside it in Sanskrit literature and in fact Sanskrit sacred books, but this was never regarded as religious instruction; it was regarded as a course in culture.

Pandit Lakshmi Kanta Maitra : My point is, this. It is not a question of research. It is a mere instruction in religion or religious branches of study.

I ask whether lecturing on Gita and Upanishads would be considered as giving religious instruction? Expounding Upanishads is not a matter of research.

Mr. Vice-President : It is a question of teaching students and I know at least one instance where there was a Muslim student in the Sanskrit College.

Shri H. V. Kamath : On a point of clarification, does my friend Dr. Ambedkar contend that in schools run by a community exclusively for pupils of that community only, religious education should not be compulsory?

The Honourable Dr. B. R. Ambedkar : It is left to them. It is left to the community to make it compulsory or not. All that we do is to lay down that that community will not have the right to make it compulsory for children of communities which do not belong to the community which runs the school.

Prof. Shibban Lal Saksena : The way in which you have explained the word "religious instruction" should find a place in the Constitution.

The Honourable Dr. B. R. Ambedkar : I think the courts will decide when the matter comes up before them.

Mr. Naziruddin Ahmad : The honourable Member has proposed to accept the deletion of clause (3). It is an explanatory note. I would ask if its deletion will rule out the application of the principle contained therein even apart from the deletion.

The Honourable Dr. B. R. Ambedkar : Well, the view that I take is this, that clause (3) is really unnecessary. It relates to a school maintained by a community. After school hours, the community may be free to make use of it as it likes. There ought to be no provision at all in the Constitution.

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Now, Sir, there is one other point to which I would like to make reference and that is the point made by Prof. K. T. Shah that the proviso permits the State to continue to give religious instruction in institutions the trusteeship of which the State has accepted. I do not think really that there is much substance in the point raised by Prof. Shah. I think he will realise that there have been cases where institutions in the early part of the history of this country have been established with the object of giving religious instruction and for some reason they were unable to have people to manage them and they were taken over by the State as a trustee for them. Now, it is obvious that when you accept a trust you must fulfil that trust in all respects. If the State has already taken over these institutions and placed itself in the position of trustee, then obviously you cannot say to the Government that notwithstanding the fact that you were giving religious instruction in these institutions, hereafter you shall not give such instruction. I think that would be not only permitting the State but forcing it to commit a breach of trust. In order therefore to have the situation clear, we thought it was desirable and necessary to introduce the proviso, which to some extent undoubtedly is not in consonance with the original proposition contained in sub-clause (1) of article 20. I hope, Sir, the House will find that the article as it now stands is satisfactory and may be accepted.

Mr. Vice-President : I am now putting the amendments to vote one after another. First of all, I put the first alternative in amendment No. 640.

The question is:

"That for article 22, the following be substituted:—

'22. No person attending an educational institution maintained, aided or recognised by the State shall be required to take part in any religious instruction in such institution without the consent of such person if he or she is a major or without the consent of the respective parent or guardian if he or she is a minor'."

The amendment was negatived.

Mr. Vice-President : Next we come to No. 641 as amended by No. 19 of list No. 1. I shall first put No. 19 of list No. 1.

The question is:

"That for amendment No. 641 of the List of Amendments, the following be substituted:—

'That clauses (1) and (3) of article 22 be deleted'."

The amendment was negatived.

Mr. Vice-President : I shall now put amendment No. 641.

The question is:

"That for article 22, the following be substituted:—

'22. The State shall not compel anyone to have religious instruction in a religion not his own in schools against his wishes, but the State shall endeavour to develop religious tolerance and morality among its citizens by providing suitable courses in various religions in schools'."

The amendment was negatived.

Mr. Vice-President : The next one is amendment No. 647.

The question is:

"That in clause (1) of article 22, after the words 'in any educational institution wholly' the words 'or partly' be added."

The amendment was negatived.

Mr. Vice-President : Now amendment No. 643.

The question is:

"That in clause (1) of article 22, after the words 'shall be provided' the words 'or permitted' be inserted."

The amendment was negatived.

Mr. Vice-President : The next one is No. 644.

The question is:

"That in clause (1) of article 22, the word 'educational' be omitted."

The amendment was negatived.

Mr. Vice-President : The next one is No. 645.

The question is:

"That in clause (1) of article 22, the words 'by the State' be omitted."

The amendment was negatived.

Mr. Vice-President : The next one is the No. 646.

The question is:

"That in clause (1) of article 22, the words, 'by the State' and the words 'wholly maintained out of State funds' be deleted."

The amendment was negatived.

Mr. Vice-President : The next one is No. 653.

The question is:

"That at the end of the proviso to clause (1) of article 22, the following be inserted :—

'and the income from which trust or endowment is sufficient to defray the entire expenditure of such institution'."

The amendment was negatived.

Mr. Vice-President : The next one is 658.

The question is:

"That in clause (2) of article 22, the words 'recognised by the State or' be deleted."

The amendment was negatived.

Mr. Vice-President : The next one is No. 661. This has been accepted.

The question is:

"That clause (3) of article 22 be omitted."

The amendment was adopted.

Mr. Vice-President : The next one is No. 662.

The question is:

"That in clause (3) of article 22, for the word 'providing' the words 'being permitted to provide' be substituted and after the words 'educational institution' the words 'in, or' be inserted."

The amendment was negatived.

Mr. Vice-President : The last one is 664.

The question is:

"That in clause (3) of article 22, for the words 'outside its working hours', the following be substituted:—

> 'maintained by that community from its own funds provided that no educational institutions, nor any education or training imparted, therein shall be recognised unless it provides instruction or training in courses laid down for public instruction in the regular system of education for the country and complies in all other respects with methods, standards, equipment and other requirements of the national system of education'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 22, as amended, stand part of the Constitution."

The motion was adopted.

Article 22, as amended, was added to the Constitution.

(Amendment No. 666 was not moved.)

Article 22A (New Article)

Prof. K. T. Shah : Sir, I beg to move:

"That after article 22, the following new article be inserted:—

'22-A. All privileges, immunities or exemptions of heads of religious organisations shall be abolished'."

It may not be, perhaps, very commonly known that Heads of Religious organisations are in the enjoyment of certain extra-territorial or extra-civil privileges. They enjoy civic immunities, privileges or exemptions, which mark them out as a class apart, but which cause in many instances heavy losses to the public purse, and gravely prejudice public interest.

I do not of course object to the nominal or formal privilege enjoyed by them of titles, precedence, honorifies and the like. Some of these Heads of Religion are considered to be equal in rank to ruling princes. They are accordingly given a salute of eleven guns, at their own cost of course if fired; and are in a position to demand that that honour be paid to them. As I said just now, I do not object to that, because each time they ask for such a mark of respect, they would themselves pay for it. But there are immunities and exemptions which mark them out as apart from the rest of the citizens of the land; and as such offend the simple principle that all citizens of this country are amongst themselves equal, without any distinction of rank, or birth, or faith or sex.

This I consider to be objectionable in principle, because the inequality thereby created is of a character which has a direct and material bearing on the rights guaranteed by the constitution to the citizens. Religious Headship, if it is truly to be so regarded in the spirit in the essence, in which it was conceived, would make the holder of that position entirely apart from...

Shri Krishna Chandra Sharma (United Provinces : General) : To whom is the honourable Member proposing to give such rights? This is a Chapter on Fundamental Rights. This proposal has nothing to do with those rights.

Prof. K. T. Shah: That is for the Chair to say.

Mr. Vice-President : Professor Shah may go on.

Prof. K. T. Shah : Sir, I am stating that this is a violation of the Fundamental Rights granted. I am not asserting any new rights. I would mention one or two illustrations of such exemptions, which used to be allowed, and

which I think are still being allowed, such as for instance exemption from Income-Tax and Customs Duties on goods imported from abroad for the use of the religious heads. These exemptions from customs duties under the Sea Customs Act and the Income-tax Act are claimed by virtue of the traditional privileges conceded to them as a matter of courtesy in a class society. I am not able to tell what precisely is the loss that the State has to suffer from the grant of these privileges to the several Heads of the several communities, who have sufficient fondness for outside goods or foreign articles to be constantly importing them on a large scale. Though these are articles of luxury, and though the heads of religious sects have sufficient income, they escape customs duties, and they demand exemption from income-tax.

Mr. Vice-President : Order: There is too much noise inside the House.

Prof. K. T. Shah : In that regard also, Sir, I am not able to give the exact amount of loss that this country suffers from this source today. In view of the very high level of taxation now prevailing on incomes, such exempted incomes ought to bring in substantial sums. For many Heads of Religion, have usually incomes running into lakhs, even crores, and, as such, if the same rate of taxation were imposed on them as on others, if the same manner of tax collection was adopted with reference to them also; if the same rigid and exacting technique was followed in regard to tax collection from these people, I should imagine the public exchequer would benefit very substantially. Under the existing rate an income of a crore of Rupees will yield a tax of Rs. 92 $^{1}/_{2}$ lakhs; and if there are 10 heads of religions like the Aga Khan, they would keep away from the public Treasury 9.25 crores or more.

It is not perhaps so much the amount of money which is lost to the State by the existence of these privileges and immunities of the Heads of Religion which may attract your attention. It is the essentially mundane character, the essentially worldly nature of these privileges, and, may I say, the consequent degradation of religion by such means which only mean material objects and material prosperity that ought to be objected to. As such these privileges and immunities should be disallowed after or on the passing of this Constitution. I hope the point appeals to the House and will be accepted.

Mr. Vice-President : Amendment Nos. 668 and 669 relate to language and script and have therefore to be postponed for the present.

Shri Damodar Swarup Seth may now move his amendment No. 670.

Mr. Z. H. Lari (United Provinces : General): On a point of order, Sir. The article in respect of which an amendment was moved previously is quite different from the article which is sought to be inserted by the later amendment.

Mr. Vice-President : I thought it would save time if the amendments are moved one after another.

Mr. Z. H. Lari : But there cannot be a discussion on two Articles simultaneously. One article has to be disposed of before another is taken up for consideration.

Mr. Vice-President : Does the honourable Member want to discuss the thing now?

Mr. Z. H. Lari: Yes.

Mr. Vice-President : That can come later.

Mr. Z. H. Lari : But these two are different articles and the amendments are distinct ones.

Mr. Vice-President : When the honourable Member comes upto speak, he can say that he is discussing such and such article or amendment. Or, if he wants, I can ask Mr. Damodar Swarup to speak later.

Mr. Z. H. Lari : That would be the proper procedure.

Mr. Vice-President : That is right technically. But I would save the time of the House by proceeding in the manner I have done. I am indifferent whether you start this way or that way.

Shri R. K. Sidhva (C. P. and Berar : General): May I know whether it is your ruling or Mr. Lari's ruling?

Mr. Vice-President : I know that the honourable Member Mr. Lari will be quite willing to accept my ruling. But I want to please everybody. That is my weakness. Does Mr. Lari abide by my request?

Mr. Z. H. Lari : I bow to your decision, Sir.

Shri Damodar Swarup Seth (United Provinces : General): Sir, I beg to move:

"That the following new article be inserted after article 22:—

'22-A. The use of religious institutions for political purposes and the existence of political organization on religious basis is forbidden'."

The Draft Constitution very rightly and justly guarantees to all citizens...

The Honourable Dr. B. R. Ambedkar : Article 19 (2) (a) covers this.

Mr. Vice-President : I am told that article 19 (2) (a) covers your point.

Mr. H. V. Kamath: Article 19 (2) (a) regulates or restricts political or other secular activities associated with religion, while Seth Damodar Swarup's amendment forbids them altogether. Between a complete taboo and mere regulation there is a lot of difference.

Pandit Thakur Dass Bhargava (East Punjab : General): There was an amendment to article 19 (2) seeking to add 'prohibiting' and the amendment was not accepted by the House.

Mr. Vice-President : It practically means the same thing as Seth Damodar Swarup's amendment. I am afraid this thing has already been covered. I cannot allow it.

Amendment No. 671. This is about cow slaughter. Already covered.

Amendment No. 672 is about language and script. So it means that we have only one amendment No. 667, and the objection of Mr. Lari has been met automatically. Amendment No. 667 of Professor K. T. Shah is now for general discussion.

Shri Krishna Chandra Sharma : Mr. Vice-President, Sir, I do not see any meaning in Professor Shah's amendment with regard to the fundamental rights. The amendment runs thus :—

"All privileges, immunities or exemptions of heads of religious organisations shall be abolished."

To say that such and such a man shall not have such and such a right is no right given. Therefore I fail to understand where the question of fundamental right arises in this proposal and how it can find a place in the chapter on fundamental rights. This proposal, I beg to submit, is out of place and as such should not find a place in this chapter of the Constitution.

Secondly, I beg to submit that Professor Shah seems to be very much afraid of religion. What is wrong with religion is not the religion itself but its wrong propagation or its propagation by inefficient or undesirable persons. Religion as such is the basis of all morality, all social and ethical values and all human

institutions. I do not find what is wrong with religion itself. There might be something wrong with religion if it is handled by wrong people, if it is propagated by incompetent people.

Shri Rohini Kumar Chaudhari (Assam : General): Sir, I oppose the motion which was moved by my honourable Friend Professor Shah. I do not understand why he should be so much against religious heads. My honourable Friend, I think, knows that there are provisions in the Civil Procedure Code whereby even ex-Ministers may be exempted from appearing in court for some months. In our part of the country there are Shatradhikars who are exempted generally speaking from appearing in any court. It would revolutionise the minds of their disciples if by any chance they are made to appear in any court and give evidence. When Professor Shah is not saying any word against the privileges which are now enjoyed by some privileged persons like high officials and Ministers of the State, why is he so anxious to curtail the privileges of heads of religious organisations in the Constitution itself, instead of allowing it to the discretion of the courts to extend the exemptions or privileges in some cases which are really necessary?

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, the amendment probably is quite laudable in its object but I do not know whether the amendment is necessary at all. In the first place, all these titles and so on which religious dignitaries have cannot be hereafter conferred by the State because we have already included in the fundamental rights that no title shall be conferred and obviously no such title can be conferred by the State. Secondly, as my honourable friend is aware perhaps, no suit can lie merely for the enforcement of a certain title which a man chooses to give himself. If a certain man calls himself a Sankaracharya and another person refuses to call him a Sankaracharya, no right of suit can lie. It has been made completely clear in Section 9 of the Civil Procedure Code that no suit can lie merely for the enforcement of what you might call a dignity. Of course if the dignity carries with it some emoluments or property of some sort, that is a different matter, but mere dignity cannot be a ground of action at all.

With regard to the amenities which perhaps some of them enjoy, it is certainly within the power of the executive and the legislature to withdraw them. It is quite true, as my honourable Friend Mr. Chaudhari said, that in some cases summons are sent by the magistrate. In other cases when the man concerned occupies a bigger position in life, instead of sending summons, he sends a letter. Some persons, when appearing in courts, are made to stand while some other persons are offered a chair. All these are matters of dignity which are entirely within the purview of the legislature and the government. If there was any anomaly or discrepancy or disparity shown between a citizen and a citizen, it is certainly open both to the legislature and the executive to remove those anomalies. I therefore think that the amendment is quite unnecessary.

Mr. Vice-President : The question is:

"That after article 22, the following new article be inserted :—

'22-A. All privileges, immunities or exemption of heads of religious organisations shall be abolished'."

The motion was negatived.

Article 23

Mr. Vice-President : We shall now proceed to the next article. The first amendment is No. 673 which is disallowed for the obvious reason that it practically amounts to a negative vote. Then we come to amendment No. 674.

Shri Lokanath Misra (Orissa: General): Sir, I beg to move:

"That for article 23, the following article be substituted :—

'23. Without detriment to the spiritual heritage and the cultural unity of the country, which the State shall recognise, protect and nourish, any section of the citizens residing in the territory of India or any part thereof, claiming to have a distinct language, script and culture shall be free to conserve the same'."

Sir, in moving this substitution for the existing article No. 23, I am speaking nothing new nor anything against what has been said in article 23. It is a fact and it has been rightly recognised in article 23 that we have different scripts, different languages and even different cultures in the territory of India and they have been recognised and, preserved and they must flourish, but I should say, as all roads lead to Rome and ought also to lead to Rome, all these cultures, all these languages and all these scripts must be taken as a means to a common end, which the State must recognise, nourish and protect. In fact, it has been our desire and it has been the very soul of the birth of our freedom and our resurgence that we must go towards unity in spite of all the diversity that has divided us. I, therefore, submit to the House that although we have many languages, many cultures, many scripts, many religions, it may not yet be impossible for us to find out if there is something common for India bequeathed even from the hoary past, which has been running on till today, vitalizing and inspiring us. Just as there is the ocean to which all the rivers go, to the cultural ocean, to the spiritual ocean that is India, that has been our heritage, all our rivers of culture, language and script, hopes and aspirations must go and from a mighty ocean ever full. Sir, this article 23 which is an article recognising diversity must find out a way for our unity and unless we have that unity, the State administration or the State rolling machine, just a rule of external law, cannot bring us to unity. Therefore for a real unity, for a homogeneous unity, and natural unity, we must evolve a certain philosophy, a certain culture, and a certain language which will contain and carry everything and still be more than everything and must at the same time be running from the ageless past to the eternal future. I therefore, submit, Sir, this amendment, which I am suggesting will find favour with the House and the House will realize that, without developing this unity which can be brought about only on a very high plane, on the plane where we are one, inspite of the appearance that we are many and in the plane of the heart, which is the home of the spirit and also in the sphere of culture, which we have all been nourishing, there cannot be a real unity and we will have no real contribution to the world civilization or the amity of man, his peace and prosperity. I therefore commend this amendment to the favourable consideration of this House.

Maulana Hasrat Mohani (United Provinces : Muslim): May I suggest that we keep this amendment for a decision afterwards or till such time as we decide what shall be the language which will be accepted as the universal language for the whole country and which is the script? May I suggest that this amendment shall stand over?

Mr. Vice-President : Maulana Sahib, I have not been able to make out what you wish to say. Do you mean amendment No. 674 or the whole article?

Maulana Hasrat Mohani : This amendment, Sir.

Mr. Vice-President : Mr. Lokanath Misra says "without detriment to the spiritual heritage and cultural unity of the country which the State shall recognise, etc." Therefore, the question of language and script does not occur anywhere. It is quite possible to think of cultural unity, though the languages

used in different parts of India may be different. So I do not quite see your objection.

Shri Lokanath Misra : What I referred to are our hopes and aspirations, the future to which we will go in our pilgrimage. I do not say that we do something here and now.

Maulana Hasrat Mohani : I think that this amendment should stand over as you have decided in the case of many other amendments. We cannot possibly decide this, unless we decide which will be the language of the whole country and which will be the script. How can we say that now?

Mr. Vice-President : This amendment has nothing to do with the national language or the script. It is quite in order here.

(Amendment No. 675 was not moved.)

Mr. Z. H. Lari : Mr. Vice-President, Sir, I move:

"That for clause (1) of article 23, the following be substituted :—

'(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'."

This amendment which I have moved is not a new motion. It is really a motion to restore the original decision of this House taken in April 1947. You will remember, Sir, I was not then a Member, but I find from the reports of the Committee, First series, 1947, that the Committee on Fundamental Rights reported that this clause should run in the way in which I have put. At page 30 of that report, the clause runs thus:

"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."

This recommendation of the Committee on Fundamental Rights was approved by this August House in April 1947. But curiously enough, the Drafting Committee.....

Mr. Vice-President: Is it a sub-committee of the Fundamental Rights Committee?

Mr. Z. H. Lari: Yes; it was a sub-committee and it was approved by this House as well, but the Drafting Committee which was charged with the duty of framing the Draft Constitution on the basis of resolutions adopted by this House changed the phraseology and the present sub-clause stands thus now:

"Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script and culture of its own shall have the right to conserve the same."

The reasons which have led me to move this amendment in order to restore it to its original condition can be briefly stated.

Sir, I believe it is accepted on all hands that cultural and educational rights have to be protected and this is the intention of article 23. There can be no gainsaying on that point. The clause as it originally stood and as it was approved by this House intended to lay down that no laws, no regulations shall be passed which would adversely affect a minority in maintaining and fostering their own culture and language. That is to say, no such laws shall be passed which would nullify a right which was being conceded to a linguistic minority. If the clause were to stand as I have put it and as the House originally approved, the result would be that there will be adequate remedy at the disposal of a minority, to see that the intentions of this House are carried into effect. But, if you look to the language used in the Draft Constitution, it comes to this only that the minority or a section of the citizens shall be entitled

to conserve its own language. What does it mean? What is its effect? It simply means this that a body of citizens shall be entitled to use their own language in their private intercourse. But the question is whether they will be entitled to use their own language in elementary education given at the state expense. No doubt, under another clause of this article, a minority can establish institutions of its own and by virtue of this clause (1), it will be open to that minority to impart, say, elementary education through its own mother tongue. But if the State were to establish institutions as it would do,—naturally there will be so many minorities which will not be in a position to start institutions of their own—, then the question arises, will it be possible for the minority to demand that, in those institutions which are being established by the State, in pursuance of any legislation, municipal or provincial, which makes free elementary education compulsory, elementary education be imparted through the medium of their own language?

An Honourable Member : Impossible.

Mr. Z. H. Lari : There is a voice which says it is impossible. If it is impossible and if the intention of the House is that even while receiving elementary education, it will not be necessary for the State to make adequate arrangements, then, my submission would be that the whole clause will be a paper transaction and nothing more. Anyway, at present I am drawing the attention of the House to its own decision and beg of them to consider whether there is any reason why their decision, arrived at after due consideration, should be set at nought. If the language were an improvement on the original clause, I would necessarily submit that improvement is permissible. But the question is, does the changed phraseology of this clause improve on the intention of the House, does it give effect to the intention of the House, or does it nullify the intention of the House? For the time being, I would request the Members to concentrate on this point. If it be the opinion of Dr. Ambedkar that really by the changed and different phraseology, the intentions, the import of that article are not changed and the same remains, then I have no objection. But my submission is this: the clause as it stands becomes innocuous: it is of no effect at all. It states a truism; it is not a fundamental right at all. Who can prevent any minority or any class of citizens from using their own culture and language to the extent that it is possible for them to do so irrespective of legislation or regulation that may be made by the State? The House will recognise that the field of education will be entirely covered by state institutions and unless the old clause is put in, I think there will be great difficulty. This is not the only place where such a clause was sought to be placed on the statute book. I may refer to article 113 of the German Constitution which runs like this:

"Sections of the population of the Reich speaking another language may not be restricted whether by way of legislation or administration in their free racial development. This applies specially to the use of their mother tongue in education as well as in the question of internal administration and the administration of justice."

Therefore, it is not a new thing that this House has done, or the Committee on Fundamental Rights had proposed. Considering the import of this article, my submission would be that the original clause should be restored and this changed phraseology should not be accepted by this House.

With these words, Sir, I move.

Mr. Vice-President : The House stands adjourned till 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 8th December, 1948.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 8*th December,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following Members took the Pledge and signed the Register:—

Shri Manikya Lal Verma (United State of Rajasthan)

Shri Gokal Lal Aawa (United State of Rajasthan)

DRAFT CONSTITUTION—(*Contd.*)

Article 23—(*Contd.*)

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion of article 23 to which two amendments have been moved. Amendment No. 677 relates to national language and script and is therefore postponed. Amendment Nos. 678, 679, 680 and 681 (1st part) are to be considered together as they are of similar import. I can allow No. 678 to be moved.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Sir, I move—

"That in clause (1) of article 23, for the words "script and culture" the words "script or culture" be substituted."

The only change is from 'and' to 'or' and the necessity of the change is so obvious that I do not think it is necessary for me to say anything regarding the same.

Mr. Vice-President : There is an amendment to this amendment—No. 25 of List No. I in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Mr. Vice-President, Sir, I beg to move—

"That with reference to amendment No. 678 of the List of Amendments, in clause (1) of article 23, for the words "residing in the territory of India or any part thereof" the words "residing in any part of the territory of India" be substituted."

Sir, the text says: 'a section of the citizens residing in the territory of India or any part thereof'. The expression 'or any part thereof' implies, if the passage is fully written out 'a section of the citizens residing in the *whole* of the territory of India or *any part* thereof.' I submit that no part of the citizens can reside in the 'whole' of the territory of India. It must necessarily reside in a part of India. So the words 'in the territory of India or any part thereof' would be in appropriate implying a false suggestion. I submit that if we say—'residing in any part of the territory of India', that would be quite enough. Perhaps the phraseology used in the context was due to an oversight. It gives an illogical appearance or a false suggestion that a people or a group of citizens can possibly reside in the whole of India. The further conditions of a part of India having a 'distinct language, script or culture' in the article really limit the purpose to any part of India.

Mr. Vice-President : Amendment No. 679.

Shri H. V. Kamath (C. P. & Berar : General): I have been forestalled by Dr. Ambedkar. So, I do not move No. 679.

Mr. Vice-President : Do you wish to press No. 680?

Mohamed Ismail Sahib (Madras: Muslim) : Yes.

Mr. Vice-President : Do you wish that 681 first part should be put to vote?

Prof. K. T. Shah (Bihar : General) : First part is covered by Dr. Ambedkar's amendment. But I would like to move the second part.

Mr. Vice-President : The second part of amendment No. 681 may now be moved.

Prof. K. T. Shah: Sir, I beg to move part (2) of my amendment which says—

"That in clause (1) of article 23, after the word "conserve" the word "develop" be added."

The amendment portion would then be that—

"Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve and develop the same."

Sir, I look upon culture of mankind, and the culture of every section of mankind, as not merely a static phenomenon but as a progressive and developing fact. To my mind, therefore, even more important than conserving it at some stage to which it has risen, is the need to develop it. And the culture of a country or a community is much wider and larger and deeper, than its script or language, as I shall show below, and hence this amendment.

Speaking of the languages of the various sections of the country, they have, in recent years, especially during the last two or three generations, been developed and cultivated up to a point at which many of them have become suitable, in my judgment, to become the vehicles for the imparting of any state of instruction, right up to the University standard. Nevertheless, there can be further development; and they ought to be further studied and promoted and developed and expanded, so as to be suitable means of expression, intercourse, and instruction or education to a much wider scale than is the case today. I, therefore, think that if you grant the right to its conservation you must also grant the right for its development, its progressive improvement and expansion.

Speaking of culture, I think that is not a single item, either of area, language or script. It is a vast ocean, including all the entirety of the heritage of the past of any community in the material as well as spiritual domain. Whether we think of the arts, the learning, the sciences, the religion or philosophy, Culture includes them all, and much else besides. As such, it is progressive, and should be regarded as being capable of constant growth as any living organism. If, therefore, you include in the Fundamental Rights this section, *i.e.*, the right to "conserve" the same, whether or not there is any attack or danger for the mere preservation of it, I see no reason why you should not couple with the right to conserve the right to develop. That is why the suggestion that I am putting forward, namely, the right to develop. Side by side with the right to conserve there must also be the right to develop the culture of any community.

You cannot hit at this amendment, you cannot negative it, without at the same time annulling the remaining portion of the clause, namely, conservation of a static position. But development is more progressive, more dynamic; and as such should commend itself to those who have the drafting and piloting of the Constitution in their hands.

Mr. Vice-President : Then comes No. 682 which stands in the name of Seth Govind Das; but I think it should stand over seeing that it relates to national language and script.

Then we come to amendment No. 683.

(Amendment No. 683 was not moved.)

As amendment No. 683 was not moved, amendment No. 52 of List III is disallowed. Then comes amendment No. 684 in the name of the Maharaja of Parlakimedi. He is absent.

(Amendment No. 684 was not moved.)

Amendment No. 685 standing in the name of Shri Algu Rai Shastri.

Shri Algu Rai Shastri (United Provinces : General) : Sir, my amendment relates to the property clause, article 24, and I shall move it when that article is taken up. It does not belong to this article and it is by a misprint that it happens to be here.

Mr. Vice-President : Then shall I take it that you want it to stand over?

Shri Algu Rai Shastri : It can be taken up at the proper place.

Mr. Vice-President : No. 686 also in the name of Shri Algu Rai Shastri.

Shri Algu Rai Shastri: I am not moving it, but I want to make a few observations on it.

Mr. Vice-President : You can do that during the general discussion. Then I come to amendment No. 687, standing in the names of Prof. N. G. Ranga and Shri Ananthasayanam Ayyangar. And then there is the first part of No. 688 of Shri Jaspat Roy Kapoor, and No. 705 also in the name of Shri Jaspat Roy Kapoor. These are to be considered together as they are of similar import. I can allow No. 687 to be moved.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, I beg to move:—

"That in clause (2) of article 23 for the words 'No minority' the words 'No citizen or minority' be substituted."

I want that all citizens should have the right to enter any public educational institution. This ought not to be confined to minorities. That is the object with which I have moved this amendment.

Mr. Vice-President : As regards the first part of amendment No. 680, I want to know whether Mr. Kapoor wants it to be voted.

Pandit Thakur Dass Bhargava (East Punjab : General) : But Sir, there is my amendment No. 26 to amendment No. 687.

Mr. Vice-President : Yes, I stand corrected. There are certain amendments to these amendments which I shall take up one after the other. One is No. 26 in List I in the names of Shri T. T. Krishnamachari and Pandit Thakur Dass Bhargava. Do you move it Mr. Bhargava?

Pandit Thakur Dass Bhargava : Sir, I beg to move.

That for amendment No. 687 of the List of amendments, the following be substituted:

"That for clause (2) of article 23, the following be substituted:—

"(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

and sub-clauses (a) and (b) of clause (3) of article 23 be renumbered as new article 23-A.

Sir, I find there are three points of difference between this amendment and the provisions of the section which it seeks to amend. The first is to put in the words 'no citizen' for the words 'no minority'. Secondly that not only the institutions which are maintained by the State will be included in it, but also such institutions as are receiving aid out of state funds. Thirdly, we have, instead of the words "religion, community or language", the words, "religion, race, caste, language or any of them".

Now, Sir, it so happens that the words "no minority" seek to differentiate the minority from the majority, whereas you would be pleased to see that in the Chapter the words of the heading are "cultural and educational rights", so that the minority rights as such should not find any place under this section. Now if we read Clause (2) it would appear as if the minority had been given certain definite rights in this clause, whereas the national interests require that

[Pandit Thakur Dass Bhargava]

no majority also should be discriminated against in this matter. Unfortunately, there is in some matters a tendency that the minorities as such possess and are given certain special rights which are denied to the majority. It was the habit of our English masters that they wanted to create discriminations of this sort between the minority and the majority. Sometimes the minority said they were discriminated against and on other occasions the majority felt the same thing. This amendment brings the majority and the minority on an equal status.

In educational matters, I cannot understand, from the national point of view, how any discrimination can be justified in favour of a minority or a majority. Therefore, what this amendment seeks to do is that the majority and the minority are brought on the same level. There will be no discrimination between any member of the minority or majority in so far as admission to educational institutions are concerned. So I should say that this is a charter of the liberties for the student-world of the minority and the majority communities equally.

The second change which this amendment seeks to make is in regard to the institutions which will be governed by this provision of law. Previously only the educational institutions maintained by the State were included. This amendment seeks to include such other institutions as are aided by State funds. There are a very large number of such institutions, and in future, by this amendment the rights of the minority have been broadened and the rights of the majority have been secured. So this is a very healthy amendment and it is a kind of nation-building amendment.

Now, Sir, the word "community" is sought to be removed from this provision because "community" has no meaning. If it is a fact that the existence of a community is determined by some common characteristic and all communities are covered by the words religion or language, then "community" as such has no basis. So the word "community" is meaningless and the words substituted are "race or caste". So this provision is so broadened that on the score of caste, race, language, or religion no discrimination can be allowed.

My submission is that considering the matter from all these standpoints, this amendment is one which should be accepted unanimously by this House.

Mr. Vice-President : There are two other amendments standing in the name of the honourable Member, namely, Nos. 27 and 28.

Pandit Thakur Dass Bhargava : I do not propose to move either of them. I want to move No. 31.

Mr. Vice-President : That comes in another category. So the honourable Member is not moving Nos. 27 and 28.

[Amendments Nos. 705, 691 and 688 (second part) were not moved.]

Maulana Hasrat Mohani (United Provinces : Muslim) : I had an amendment to this amendment of the Honourable Dr. B. R. Ambedkar because I thought he was sure to move it. Now that he has withdrawn it, where am I to go?

Mr. Vice-President : You can only take your seat. Such things happen in political life.

So all the amendments to amendment 691 fall through.

We now come to No. 692.

Pandit Thakur Dass Bhargava : What happens to amendment No. 690?

Mr. Vice-President : That will come later on. These are being taken together as being of similar import. I am trying to ascertain whether these are to be put to vote or not.

I am afraid I cannot allow amendment 692 to be moved because it is covered by the amendment to amendment No. 687.

Mr. Vice-President : Amendment No. 689: this is a verbal amendment and therefore it is disallowed.

(Amendments Nos. 693, 694, 696, 697 (first part) and 698 were not moved.)

We now come to Amendment No. 690 which is in the name of Pandit Thakur Dass Bhargava.

Pandit Thakur Dass Bhargava : I propose to move an amendment to this. Sir, I move:

"That for amendment 690 of the list of amendments, the following be substituted:

That in clause (3) of article 23, the word 'community' wherever it occurs be deleted."

This is an amendment to amendment No. 690. There is not much to be said. The word "community" as I said before has no meaning. No common characteristic can differentiate one community from another which is not covered by the words "religion or language". These words sufficiently cover the field that is sought to be covered by the word "community". Therefore the word "community" has no meaning in that provision and therefore it should be deleted.

Mr. Vice-President : Amendment No. 695: this is a verbal amendment and therefore it is disallowed.

[Amendments Nos. 697 (second part) and 699 were not moved.]

Amendment No. 700 is disallowed as it is covered by another amendment regarding the Directive Principles.

Amendments Nos. 701 and 702 are to be considered together as they are of similar import.

(Amendments Nos. 701, 702 and 703 were not moved.)

Amendment No. 704 is more comprehensive and may be moved.

Shri Damodar Swarup Seth (United Provinces : General) : Sir, I beg to move:

That for sub-clause (a) of clause (3) of article 23 the following be substituted:—

"(a) Linguistic minorities shall have the right to establish, manage and control educational institutions for the promotion of the study and knowledge of their language and literature, as well as for imparting general education to their children at primary and pre-primary stage through the medium of their own languages."

While in sub-clause (a) of clause (3) of article 23, obviously minorities based on religion and community have been recognised, my amendment recognises only minorities based on language. I feel, Sir, that in a secular State minorities based on religion or community should not be recognised. If they are given recognition then I submit that we cannot claim that ours is a secular state. Recognition of minorities based on religion or community is the very negation of secularism. Besides Sir, if these minorities are recognised and granted the right to establish and administer educational institutions of their own, it will not only block the way of national unity, so essential for a country of different faiths, as India is, but will also promote communalism, and narrow anti national outlook as was the case hitherto, with disastrous results. I therefore submit that only minorities based on language should be recognised and be granted the right to establish and administer educational institutions and that too for the purpose of promotion of their language and literature and for imparting primary and pre-primary education in their own language. Higher studies are to be conducted in the national language of the

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state. I therefore submit, Sir, that this amendment is most harmless and innocent and hope that it will be accepted by the House quite unreservedly.

(Amendment No. 706 was not moved.)

Prof. K. T. Shah : Sir, I beg to move:

That the following proviso be added to sub-clause (a) of clause (3) of article 23:—

"Provided that no part of the expenditure in connection with such institutions shall fall upon or be defrayed from the public purse; and provided further that no such institution, nor the education and training given therein shall be recognised, unless it complies with the courses of instruction, standards of attainment, methods of education and training, equipment and other conditions laid down in the national system of education."

Substantially speaking, it seems to be the same amendment or similar to the one I moved yesterday or the day before, *viz.*, amendment No. 664. Only, there it was in a more positive form and here it is in a negative form, making it more clear that whatever be the foundation or endowment, in the first instance, of any such national institutions, no part of the expenditure should fall upon the public purse—neither partly nor wholly.—This I consider is necessary to provide specifically in view of the possibility of any party taking advantage of the positive provision made above. I should not like to waste the time of the House beyond just pointing out that this in reality is not identical, but that in substance it is the same. I am afraid I have not much hope of making the House change its viewpoint within 48 hours, and therefore I do not wish to take any more time of the House by speaking on it.

(Amendment No. 713 was not moved.)

Mr. Z. H. Lari (United Provinces: Muslim): Sir, I beg to move:

That after clause (3) of article 23, the following new clause be inserted:—

"(4) Any section of the citizens residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script."

A notice of an amendment to this amendment has been given by Mr. Karimuddin. I would gladly accept it when it is moved. That amendment is for the addition of the words 'in case of substantial number of such students being available.'

The first question that arises in this connection is whether it is necessary, either in the interests of a minority or of society, that primary education should be imparted through the medium of one's mother tongue. It is a very legitimate question to ask and I propose to give an answer to it. Only recently, the Government of India accepted a Resolution and published it in the Gazette of August 14, 1948. In the course of that Resolution they say:

"The principle that a child should be instructed in the early stages of its education through the medium of the mother tongue has been accepted by the Government. All educationists agree that any departure from the principle is bound to be harmful to the child and therefore to the interests of society."

That resolution further goes on to say, 'Conditions like these make it impossible for any State or Province to adopt any single language as the medium of instruction. An attempt to adopt one language in a Province where groups of people speaking different languages reside and to impose it on all is bound to lead to discontentment and bitterness. It will affect inter-provincial relations and set up vicious circles of retaliation.'

And, towards the end they say:

"The Government of India is of opinion that in the larger interests of the country, it is desirable that the policy enunciated above should be followed by all provincial and State Governments".

Therefore, according to this very Resolution it is accepted that it is essential in the interests of society as well as of the minority that its children should be imparted primary education through the medium of the mother tongue.

I would refer this House, at this stage, to a reply given by the Honourable Maulana Abul Kalam Azad, the Education Minister in the Dominion Parliament at its session held in September last.

The Honourable Shri K. Santhanam (Madras: General): May I point out to the honourable Member that his amendment implies that every child has got the right to primary education immediately? Without that right this right cannot be sought. Therefore we have given a Directive....

Mr. Z. H. Lari : That is a different question. I will deal with it afterwards. I am here drawing the attention of the House to a reply given by the Education Minister to a question put in the Dominion Parliament.

Mr. Vice-President : I suggest that Mr. Lari keeps in mind the point of view put forward by Mr. Santhanam.

Mr. Z. H. Lari : I would. But here is the report of the interpellation. Replying to Shri S. V. Krishnamurti Rao, Maulana Abul Kalam Azad, the Education Minister said that the mother tongue of the child would be the medium of instruction in primary schools, *i.e.,* up to junior basic stage from the age of six to eleven as stated in the Resolution of the Government on the subject and added: "The Central Advisory Board of Education in their report on postwar educational development in India, published in 1944, recommended that the medium of instruction in the secondary stage should be the mother tongue of the pupils."

Therefore, so far as the necessity of such a provision is concerned, it cannot be denied.

The next question is, does this right partake of a fundamental character so as to find a place in this Chapter. The first Constitution of a Free India that was framed was the Nehru Report under the able guidance of that prince among patriots, Pandit Motilal Nehru. One of the Fundamental rights suggested therein ran as follows:

"Adequate provision shall be made by the State for imparting public instruction in primary schools to the children of members of minorities through the medium of their own language and in such script as is in vogue among them". The nature and the fundamental character of this right has been accepted by that very Resolution of the Government of India to which I referred earlier. Therein they say:

"All provincial languages are Indian languages and there is little reason why any province in India should seek to deprive the children inhabiting that province of their fundamental right to receive education through the medium of the mother tongue."

Therefore even the nature and character of this right has been fully accepted by the present Government of India as well as by those seven leaders who framed the Nehru Report.

Now the third question arises. It is also very relevant. Is it necessary to put in this Chapter, after the clear acceptance of such a policy by the Government of India for the time being? I have personal experience of my province, which shows that it is absolutely necessary. I would give an instance in this regard. The House will note that the United Provinces is a bilingual province. Therein two languages, namely, Hindi and Urdu have been used and widely read by members belonging to different communities. If I only give you the figures of students appearing at the two examinations, *viz.,*high school and middle school, you will find that at least one third of the

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students offered Urdu as their language. In 1944 the students who took Hindi numbered 11,617 while those who offered Urdu numbered 7,167;

In	1945	do.	12,423	do.	7,426;
	1946	do.	14,222	do.	8,244;
	1947	do.	18,302	do.	13,080.

Therefore you will see that two-thirds of the students who appeared at the high school examinations offered Hindi and one-third offered Urdu.

But, now what happens? All of a sudden in May last, a curriculum was published the result of which, according to my reading, was absolute elimination of Urdu. I was assured that was a misapprehension. But when the classes opened in July 1948, I find that my reading was correct. My child of six, came and said: "Today my master asked me that I should do all the sums in Hindi and Hindi only." He was further told not to bring Urdu Book. I was surprised. On enquiry I found the same condition in all schools. I wrote letters to all concerned and I was assured again that a G. O. was being issued to the effect that wherever there was a demand by students for being taught in Urdu, this should be done. Subsequently I wrote a letter to the Principal of the College to make arrangements for teaching Urdu. I received a reply in the negative. He said no such arrangement can be made. Ultimately, when I forwarded that letter to the Minister for Education, the reply came in October to the effect that arrangements can be made only when the majority of the guardians want that education in Urdu should also be imparted. The Resolution of the Government of India and all the answers given were intended for the facility of a minority which is less than 50 percent, but that facility was denied and made dependent on will of the majority. The result is that in a Province wherein to use the words of that noble soul, our own Prime Minister, began the process which was to continue for several centuries for the development of a mixed culture in North India; Delhi and what are known now as the United Provinces became the Centre of this just as they had been and still continue to be the Centre of Old Aryan culture. They are the seat of the old Hindu culture as well as of the "Persian culture", teaching of Urdu, the moinspring of Muslim culture has been banned. In Lucknow and in Allahabad, where Urdu knowing public is of sufficient strength in fact in most places, so far as primary education is concerned, no arrangement has been made for teaching through the medium of one's own mother tongue. I know of Allahabad positively and of Lucknow too which is considered to be the centre of Urdu, so far as primary education is concerned, in those two places no arrangement exists whatsoever for teaching the children of the minorities through their mother tongue. Therefore this experience of mine in my own province shows that there is necessity for such a provision, and that such a provision should find a place in the Constitution. But I am conscious of one difficulty, rather two difficulties. One difficulty is, supposing the numbers of students who want to have a particular language as the medium of instruction were few in number. That difficulty has been obviated by the amendment which has been given notice of by Kazi Syed Karimuddin.

There is another difficulty which has been pointed out. I have said here, "any section of the citizens". It may be that people of one province, very few in number, residing in another province may claim that their children should be given instruction through the medium of their own language. But that objection can be met by substituting the word 'minority' for the words "section of the citizens". I think Begum Aizaz Rasul has given notice of that amendment.

After these two amendments, the clause will read—

"Any minority residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script in case of substantial number of such students being available."

Now to take up the objection of Mr. Santhanam. In the Directive Principles we say that the State shall endeavour to provide education up to the age of fourteen and so on and so forth. You remember, Sir, that that clause as it originally stood was—

"Every citizen is entitled to free primary education and the State shall endeavour to provide....." etc.

The words "Every citizen is entitled to free primary education" were deleted and the speaker, when moving that deletion, said that this was of a fundamental character and therefore such a clause could hardly find a place in that chapter. That is why I have given notice of another amendment which says that there should be an article in the fundamental rights that every citizen is entitled to receive primary education. So far as the clause in the Directive Principles is concerned, it does not relate to primary education only but relates to secondary education as well. Anyhow, we are dealing with the cultural and educational rights of the minorities here, (and the educational right that I want to have inserted here is that primary education should be imparted through the medium of the mother tongue. It does not say that they must be given primary education but if there is any arrangement for primary education, then that primary education should be imparted through the medium of one's mother tongue. There is thus no legal obstacle.) With these words, Sir, I move my amendment.

Mr. Vice-President : Amendment No. 58 of List III standing in the name of Kazi Syed Karimuddin.

Kazi Syed Karimuddin (C. P. & Berar: Muslim): Mr. Vice-President, Sir, it is unnecessary for me to explain the scope of the amendment moved by Mr. Lari. I have an amendment to move to the amendment of Mr. Lari which runs like this:

"That in amendment No. 714 of the List of Amendments, in the proposed clause (4) of article 23, the following words be added at the end:—

'in case of substantial number of such students being available'. "

Sir, according to the fundamental rights, freedom of movement and freedom of trade and commerce have been granted and it is just possible that people may be moving freely from one part of the country to another and settling in other provinces. Moreover, there would always be Government servants who would be transferred from one province to another. Take for example the case of the city of Delhi. There are Madrasis; there are Bengalees; there are Muslims; there are Telugu people also in Delhi. If no provision is made for their education in the primary schools, it would be very difficult for their children to be educated in their own mother tongue at least in the primary stage of schooling. Therefore my submission is that Mr. Lari's amendment is not only important from the Muslim point of view, from the minorities' point of view, but also from the point of view of those who come from Bengal and Madras or other provinces. Therefore the amendment of Mr. Lari with my amendment should be accepted.

Mr. Vice-President : There is a short notice amendment standing in the name of Begum Aizaz Rasul.

Begum Aizaz Rasul : (United Provinces : Muslim): Sir, I beg to move—

"That in the amendment moved by Mr. Lari for the words 'section of the citizens' the word 'minority' be substituted."

[Begum Aizaz Rasul]

The clause will then read—

"Any minority residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script."

Sir, my amendment speaks for itself, and after hearing Mr. Lari, I do not think it is very necessary for me to go into details about this. The word "minority" has been defined in the Draft Constitution. I think that it is necessary that minorities who have a distinct language and script should have this right guaranteed to them by the State, that the children of these minorities will have all facilities provided to them to have primary education imparted to them in their mother tongue. Sir, It is an accepted principle all over the world that a child in the primary stages of education should have that education imparted to it in its mother tongue. I do not think that there can be any difference of opinion regarding this matter. It is impossible for a child who belongs to a section of the people whose language and script is different to that of the State to receive education in another language, because that militates against the very principle of learning. You cannot burden the mind of the child by forcing him to receive his primary education in an alien tongue and script. Sir, the object of this amendment is in no way meant to debar the children of minorities from learning the language of the State. It is in the interests of the children of the minorities themselves that they should learn the language of the State, whatever that language may be, as their economic future as well as entry in services, etc., depends that they should be well conversant with the language of the State. Therefore it should not be taken that I am in any way opposing the idea of the children of minorities learning the language of the State—but mine is a fundamental point because on good foundations of learning can education be effective. Sir, I do not think that it would have been necessary to have moved this amendment at this stage, but there are practical difficulties which we have experienced and therefore it is necessary that in the fundamental rights some provision should be made which would make the position clear and which would guarantee to the children of the minorities living in the territory of India the right to be given instruction in their own mother tongue in the primary stages. With these words, Sir, I move this amendment and hope that it will be accepted.

(Amendment No. 715 was not moved)

Mr. Vice-President : The article is open for general discussion.

Shri Mihir Lal Chattopadhyay (West Bengal : General) : Mr. Vice-President, Sir, this particular article 23 of the Draft Constitution is a definite guarantee to the minorities that their language, culture and script will be protected in every way. There are different kinds of minorities in this country and all these minorities based on language, script and culture will really find a great protection in this article. It is true that in different provinces of this country there are minorities living who have languages different from the language of the majority and it is a fact that in many provinces in India the minorities based on language are subjected to various types of disabilities and as a result, for some time past, there is a subdued voice in the country about the tyranny and imperialism of language. The other day, Mr. T. T. Krishnamachari made a reference about the Imperialism of language. I have no quarrel with him on this matter but I do not know how long it will take for a citizen of this country to accept joyfully a national language that is the language of this country, but it must be acknowledged that a minority having a definite and distinct language of its own, but residing in a province, where the provincial language is different, ardently seeks to maintain its language and its culture without being interfered in any way. It is true that this country is divided into different provinces and each and every

province has got a provincial language of its own, but unfortunately, in the matter of demarcating the provinces, the British Government did not take much care about demarcating on the basis of language and for that matter in almost every province there are minorities and there has really arisen some danger of the language and culture of the minorities in the different provinces being put under numerous disabilities.

This article 23 gives an assurance to the minorities that their languages will be guarded, the minorities will be able to conserve their own languages and not only conserve, but a definite development also can be made by them. The minorities also will find no discrimination made in the matter of Government aid for the protection and development of their languages. This article 23, is, therefore in every way a great charter of right for the different linguistic minorities in the different provinces of India. It is necessary that the minorities living in a province should not all the time feel themselves isolated and consider themselves as something definite and distinct from the nationals of that province in civic life. The minorities have also to adopt themselves to the language and the culture of the provinces they live into a large extent. No minority should live in a province as a foreigner as the British people or their half-brothers in India have lived all these years; but the majority also should have maximum consideration for the minorities in the provinces so far as their language and culture are concerned. In fact a new example has been set by the Congress the other day when the Congress directed some of the Provincial Congress Committees that the minority having a language different from the language of the province, will be allowed to carry on correspondence with the provincial Congress Committees in the language of that minority.

The demand which is being heard from various quarters about realignment of provinces or rather redistribution of provinces on linguistic basis, will be satisfied to a large extent by the provisions of this article in the Draft Constitution. The minorities are mightly afraid of their languages being put out of existence by the aggression of the majorities, who might be very unsympathetic towards the minorities in these matters. The minorities are zealous about guarding their own language and culture, and quite naturally they should be so. The majority must have some sympathetic understanding about the feeling and outlook of the minorities. By that alone, in the different provinces, the cry that has arisen about the redistribution of territories on a linguistic basis will stop to a large extent. We all know that soon after the partition of India into two parts, the question of redistribution of provinces on linguistic basis is be set with many difficulties. It is a problem that will take a long time to settle. But, it is to be remembered that if minorities are subjected to tyranny and oppression and aggression by the majority in the matter of language and culture, there will be trouble in this country and the Governments in the provinces will be faced with difficulties. Therefore, this article 23 is a clear direction to the majority in the different provinces to look after the interests of the minorities so far as language and culture are concerned. If the majority in dealing with the minorities tries to understand their view point and tries to safeguard their interests so far as language and culture is concerned. I think the voice that has risen in India about the immediate re-distribution of provinces on linguistic basis will be consoled to a large extent.

I wholeheartedly support this article.

Shri R. K. Sidhwa : (C. P. & Berar : General) : Sir, regarding this article on education based on religion or otherwise, I would have certainly preferred a very clear and unambiguous provision. Sir, some of the provisions of this

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article are contradictory. While the Constitution has recognised that all communities have a right to give education on religion, article 22 states that where State aid is given, there shall be no religious education provided. Again, there is a proviso that communities which do not expect any State aid shall have a right to give education on religion according to their choice and custom. Personally, Sir, I feel that as far as religious education is concerned, it should have been mentioned in unambiguous terms that wherever an educational institution receives State aid, there shall be no religious education taught in those institutions. My objection is not because I am averse to religion. I believe in religion, Sir, I believe in the existence of God. But, I do feel today that the religious books of the various communities are translated by various authors in a manner which has really brought disgrace to several religions. The authors have translated some of the very beautiful original phrases in their own language to suit their own political ends, with the result that today on religious grounds we know the country has broken into various pieces. I therefore desire, Sir, that in the matter of education, which is the fundamental basis of our future, it should have been clearly stated that under the existing circumstances, there shall be no religious education provided in any institution which receives State aid.

As I have stated, Sir, while the State has not recognised any religion, they have allowed those institutions which do not receive State aid to impart religious education in their institutions. I do not want to go into the various phases of the religious scriptures which are being taught in the various schools. I know of instances where in the name of religion communal hatred has been taught. I do not know whether in this new era when we will be functioning under this Constitution, the same type of religious education would be taught. There is no restriction regarding that kind of religious instructions that are being given in various schools. I can quote them; but I do not want to create any kind of ill-feeling between community and community. I only wish that in this matter the Constitution should have made it clear as to what education means as far as religious education is concerned. On that matter, this chapter is silent; not only silent, but I apprehend that in the name of religion, there will be the same type of religious education taught in the institutions. I have been reading and re-reading these two chapters and I feel that there is no kind of control over such kind of schools and colleges. On the contrary, it will be stated that the Constitution has given them freedom to teach religion in any manner they like. Knowing fully well, as we do, what religion in this country means to various communities, this chapter, I feel, Sir, should have been more clear.

As far as the suggestions and amendments that where various communities and minorities reside, education should be in their language. I find clause (b) is clear, although I would certainly have preferred the amendment of Damodar Swarup Seth, which is very clear. I do not think the State denies this even in this Constitution. Here, the minorities must not be misunderstood to mean religious minorities; minorities mean various classes of people. For instance, in Bombay, there are eighteen classes of people. Just now four lakhs of Sindhis are in Bombay. The Corporation have recognised the Sindhi language. Although they have not recognised the Sindhi language, they have opened schools for them. I do feel there is provision in this Constitution wherever there are such classes or linguistic communities or sub-communities, the State shall provide all facilities to them. If the State were to deny that, that State will not be discharging their duty. I am quite clear that the Constitution has made provision to that effect. In the Directive principles also we have stated that every child, no matter to whatever class he

belongs, shall be imparted education compulsorily by the State. There is no fear as far as this is concerned, that all children, whether they belong to any small minority or linguistic minority, would be provided education in their own mother tongue. Mr. Lari's amendment therefore is out of place. I am clear that the Constitution has provided for this and if such education is not provided, I would state that the State and the provinces and the provincial Governments would be failing in their duty and not discharging their duty by providing that kind of education which it is their duty to provide.

Shri Jaipal Singh (Bihar : General): Mr. Vice-President, Sir, I have great pleasure in welcoming this article, more so as it has been suitably amended by Dr. Ambedkar, and I hope his amendment will be accepted by the House. Sir, to he this article seems to open a new era for India. Recently there has been such a lot heard about linguistic provinces, and, my friend from West Bengal has already hinted that this particular article opened a way for a realignment of provincial boundaries, for the creation of fresh provinces. Sir, I do not look upon this article in that light. I do not believe that provinces should be carved out purely on a linguistic basis. There are other factors also that must be considered. There is the administrative convenience; there may be the geographical argument; there may be the economic demand and various other factors which must be taken into account before the linguistic argument can be given the emphasis that is demanded of people who feel aggrieved that they are a linguistic minority in any particular province. I do hope that once this article is passed by this Assembly, all the Governments of the provinces will see to it that its spirit is implemented immediately. They need not wait till the Constitution as a whole is brought into existence. Already in my part of the world there is a tremendous—a very unhealthy—linguistic warfare going on. It is assuming dangerous proportions, in my own case, in Chota-Nagpur hitherto—on the ground of language, attempts are being made to snatch a bit to the east, snatch a bit to the south, snatch a bit to the west. No consideration whatever is given to the fact that there are other grounds also which have to be taken into consideration, *e.g.,* the question whether administratively this or that portion should be taken out of a particular area. I urge, and I have urged this before elsewhere also, that language by itself is no argument for the creation of new provinces or for realignment of boundaries. I do hope in my part of the world—particularly the Provinces of Bihar, Orissa and West Bengal will now see a new way of approaching this linguistic problem. In Bihar, for example, the Bengali-speaking people have always made the grievance that they were being victimised by the Hindi-speaking majority of the province. Sir, much has happened in the past—it is an ugly chapter—but I do hope now that this particular article will be in the Constitution that even the linguistic minorities may look forward to a confident future where they will have opportunities of conserving and developing their own particular languages. Sir, when we talk of languages, we generally think of languages that have a highly developed literature, that have a script and so forth. I would like to urge that languages that have not a script also deserve to be conserved and, to use Prof. Shah's amendment,—'developed'. I have been trying to look through the figures in the language census that has been provided us and I find that the languages of this country have been divided into five main divisions and in this division I find that the aboriginal languages have been classified separately. Now take the language which is known as the Mundari group of languages. According to the census I find there are very nearly 5 million people who speak the Mundari language. How many members are there in this House really who know that Mundari is a very rich language, that there is the Mundari Encyclopaedia—14 volumes of it? Yet, can it be said that in Mundari speaking areas that language is being encouraged? Is it not the practice that

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every ruling class tries to drown whatever language there is in the country? We have had instances where a ruler has been an Oriya, he has forced Oriya upon the people of his State. The British came and they tried to thrust English down our throats. May be in Bengali-speaking areas, Bengali is insisted upon. Sir, I accept that, whatever be the provincial language, every person must learn that language. We have yet to decide what the rashtrabhasa will be—what shall be our national language. Everyone of us must learn that language. I want to urge that the languages must be conserved and developed. I realize that, in many instances, particularly of the aboriginal people, it would mean their learning three languages, *viz.,* their own, the provincial language and also the rashtra-bhasha or the national language. But I do not think it would be too much of as train. After all the mother tongue is such that it does not exact the speaker much, but the main thing is this that all the provinces wherever there are linguistic minorities—I hate to use the word 'minority' in that sense—wherever there are linguistic minorities, the provinces should take a positive step in encouraging, in conserving, in developing all the languages that are capable of being conserved and developed. There are certain languages that will go under. I do not think there is much point in trying to keep alive a language that has not enough vitality in itself, that could not on its own momentum compete against other languages. I am not trying to defend those languages that have come and gone but I am thinking of languages that have survived through thousands and thousands of years and, if they are developed, they are capable of teaching us much about the past. I may give an instance. Now we know very little about ancient Indian history. That is largely because the most ancient stock of people who lived in this country, their languages have not been studied by the new-comers. It is a sad fact today that most of the aboriginal languages have been studied by foreigners. I doubt if there is a single Prime Minister of any province who can speak the aboriginal language of the majority of the aboriginals in his province. I doubt if there is a single minister in this country today who can speak any aboriginal language. If we are to develop these pre-Aryan languages, we shall find revelations from the 'Asurs' for example, we shall know more of the early days of the incoming of the Arya-speaking people. There are many things yet to be learnt about the ancient past, not only of the people but of the country as a whole. I look at article 23 from various angles. Sir, I have great pleasure in welcoming this article and I do hope that the Provincial Governments will act according to the spirit of this article long before the Constitution actually comes into existence so that the bitterness that there is in the provinces on account of this linguistic warfare may gradually disappear and all linguistic minorities may feel that their languages will not be victimised, that they may develop their languages as they like and that their language has a rightful place in the country.

The Honourable Shri K. Santhanam : Mr. Vice-President, Sir, this article deals with one of the most difficult problems which free India will have to face. The problems of religious minorities and of scheduled castes are legacies of the past and I expect that in the near future they will simply lapse owing to the lapse of time and owing to circumstances. But the question of the linguistic minorities will be a problem for many decades to come and I am afraid, it is going to cause the country a great deal of trouble.

Sir, I have great sympathy with Mr. Lari and others who plead that more categorical assurances should be given by the Constitution for the linguistic minorities. But I am afraid it is not possible to go further than what the article tries to do. It protects them in three different ways. Clause (1) of article 23 gives the right to every minority to conserve its own culture.

Maulana Hasrat Mohani: This is no right. What is it?

The Honourable Shri K. Santhanam : Sir, you will remember that throughout Europe, after the first World War, all that the minorities wanted was the right to have their own schools, and to conserve their own cultures which the Fascist and the Nazis refused them. In fact, they did not want even the State schools. They did not want State aid, or State assistance. They simply wanted that they should be allowed to pursue their own customs and to follow their own cultures and to establish and conduct their own schools. Therefore I do not think it is right on the part of any minority to depreciate the rights given in article 23(1).

Sir, in clause (2) of article 23 they are protected against discrimination. It is just possible that there may be many provinces based on language and therefore the Government, the ministry and the legislature will be composed dominantly by members of the majority language. This right of non-discrimination will then become fundamental and valuable.

And then in clause (3) of this article, it is provided that when the State gives aid to education, it shall not discriminate against any educational institution, on the ground that it is under the management of a minority, whether based on community or on language, and this will be particularly applicable to the linguistic minorities. In every province, there are islands of these linguistic minorities. For instance, in my own province of Tamil Nadu there are islands, in almost every district, of villages where a large number of Telugu-speaking people reside. In this connection we have to hold the balance even between two different trends. First of all, we have to give to large linguistic minorities their right to be educated—especially in the primary stages—in their own language. At the same time, we should not interfere with the historical process of assimilation. We ought not to think that for hundreds and thousands of years to come these linguistic minorities will perpetuate themselves as they are. The historical processes should be allowed free play. These minorities should be helped to become assimilated with the people of the locality. They should gradually absorb the language of the locality and become merged with the people there. Otherwise they will be aliens, as it were, in those provinces. Therefore, we should not have rigid provisions by which every child is automatically protected in what may be called his mother-tongue. On the other hand, this process should not be sudden, it should not be forced. Wherever there are large numbers of children, they should be given education—primary education—in their own mother-tongue. At the same time, they should be encouraged and assisted to go to the ordinary schools of the provinces and to imbibe the local tongue and get assimilated with the people. I feel this clause does provide for these contingencies in the most practicable fashion.

Sir, Mr. Lari wanted an amendment which seeks to provide that every child, rather that every section of the citizens, shall be entitled to have primary education imparted to its children through the medium of the language of that section. I suppose what he means is that wherever primary education is imparted at the expense of the State, such provisions should be made. But this, I think, would give the minority or section of people speaking a language the complete and absolute right to have primary education which the people of this country do not have today. In the directives we have provided that in fifteen years' time there should be universal primary education. But no one knows whether the financial and other conditions in the country would permit of universal primary education to be established even then. Today no one in India can ask for primary education as a right as only ten per cent. of the population get primary education. Therefore, it is not possible to accept Mr. Lari's amendment, because that would lead to all kinds of difficulties. If it were passed,

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then anyone can go to the Supreme Court and say that his child must get education in a particular language. That is not practicable, and I do not think even his intention is at all that.

At the same time, I think, what he has pleaded for must be kept in mind as a general policy. It should be the direction of the Central and the Provincial Governments to see that wherever there are congregations of boys and girls having a distinct mother tongue, schools should be provided in that language. I hope that will be the policy adopted all over the country, especially as, if there is going to be new linguistic revisions of the boundaries, all the border areas will be full of this problem. I hope the report of the linguistic Provinces Commission will contain some wise provisions to be adopted in this behalf. There should be no difficulty or hardship whatsoever in provinces when they are rearranged on a linguistic basis. For instance, if a Telugu goes to one area or the other, he should not have any hardship. As I said, this is a most difficult and complicated problem and it cannot be dealt with in detail in the fundamental rights. This article 23 provides as much security as can be done in the Constitution. Other securities will have to be provided for both by Parliamentary and provincial legislation, and I hope it will be done in due course.

Mr. Z. H. Lari : May I know what machinery he would suggest for the enforcement of those general principles he has just enunciated?

The Honourable Shri K. Santhanam : I have got my own ideas, but it is not for the Constitution to incorporate them. When we meet in Parliament, I shall be glad to put forward my proposals in this direction. For instance, there can be a special linguistic commission to look after these linguistic minorities, to be appointed by Parliament and this commission can tour round the country and look into grievances wherever they may be felt and make suggestions.

Mr. Z. H. Lari : But let me remind that according to the Minister for Education, U.P., it is a provincial subject and he cannot be guided by a resolution of the Government of India.

The Honourable Shri K. Santhanam : I may remind Mr. Lari that wherever people are self-governing, you have to persuade them, even when they are in the wrong; otherwise there is no machinery or commission which can be imposed from outside, either on the provincial ministry or on the central ministry.

Mr. Vice-President : I cannot allow arguments inside the House. Mr. Santhanam, you had better go to your seat. Mr. Biswanath Das.

Shri Biswanath Das (Orissa : General): Sir, I wish I were able to congratulate our Honourable colleagues—the members of the Drafting Committee, but I am sorry I cannot do anything except disapproving portions of this article.

Sir, we have been accustomed to the notion of having two cultures, namely the oriental and the occidental cultures. But our honourable, friends the wise men of the Drafting Committee, have not only given us idea of multicultures but also perpetuated cultural zones; they have not only given scope to perpetuate these cultural zones, but they have also given scope for various kinds of linguistic and script difficulties, not only in India, but also in the Provinces to come in. Thanks to Pakistan it has created a refugee problem for India, a refugee problem where friends migrating not in thousands and lakhs, but in millions are to be distributed all over India. I would appeal to you, to visualise the difficulties of provinces, wherein people from different linguistic areas like Sind, Frontier and East Bengal are to be distributed in various provinces and States in India. Are you going to give them a right to perpetuate their script and their language irrespective of the fact how small or how few they may be?

I should appeal to you to consider this question cooly and seriously. Are your finances so very extensive as to provide for anything that is called upon to be done, even for a small percentage of people? For myself, personally, I have no objection because I yield to none in my anxiety to give all necessary

facilities in India to linguistic minorities and groups. But are you going to give this latitude as called upon here?

It was probably in the year 1938, the Honourable Prime Minister of Madras, who now adorns the gaddi of our mighty ancestors, Indraprastha, I mean His Excellency Rajagopalachariar, told a deputation of Oriya gentlemen at Berhampore railway station that "Well, the time will come when you and your people living in Madras will have to learn in the language of the province. Each minority population distributed in a province has to learn the language of the province."

A different principle has been enunciated altogether in this article. Those who know say there are Oriyas in Andhra and Andhras in Orissa who know the language of the place in which they are staying. So also is the case with people living in Gujarat, the U. P., in Bengal and such like places. Are you, gentlemen, going again to revive the whole thing in all its freshness? This is a serious question and I want you to think seriously over this.

I thank my friend, Mr. Jaipal Singh, for having given a full picture of what his demand is going to be. I want you also to consider that aspect of the question. These are not easy things taken away by snap words. I would therefore appeal to you to consider the whole question in its entirety with all the repercussions it might bring on the future of India.

Shri T. T. Krishnamachari (Madras : General): On a point of order: is the honourable Member addressing the Chair or a public meeting?

Shri Biswanath Das : I know this more than my honourable Friend, having had a longer period of legislative experience. My own misfortune is that I am not able to face you however much I would like. Therefore from the nature of things I am called upon to address my friends however much the rules desire that I should address you. There need therefore be no attempt at coaching in this respect.

Mr. Vice-President : Will you please go back to your own work?

Shri Biswanath Das : Thank you very much. He should save himself and me from advising. The British Government had given us religious minorities. What are those religious minorities? I claim that my Muslim brothers are blood of my blood and bone of my bone. They are mine and I belong to them and they belong to me. There is absolutely no difference so far as their culture is concerned. The culture is ours. It is oriental culture, I do not again see any reason why any trouble would come in on the score of language. So far as my Muslim brethren are concerned, I may say that no less a person than the ex-Prime Minister of Bengal had told me during his visit to Orissa that he was surprised to see that some Muslims in Orissa could talk better Hindi than he himself could do. That is the position of Muslim friends in our country. Go to the South, and you find Muslims in Andhara, Tamilnad and the rest talking Telugu and Tamil and not Urdu. Therefore, their language and culture are one. I would therefore appeal to the honourable Members of this House to look at that aspect of the question.

Having said so much on (1) and (2), I come to (3)(b) which states that the State shall not in granting aid to educational institutions discriminate against any educational institution on the ground that it is under the management of a minority whether based on religion, community or language. Therefore, hereafter be it clearly understood that every minority, living in the remotest village, will claim a special aid for an institution in his language, and that has to be conceded: otherwise both the High Courts and the Supreme Court are his places of refuge. That is a serious thing and I appeal to you to consider this very seriously.

[Shri Biswanath Das]

Having stated so much about this, I come to the question of linguistic provinces, which has been referred to by my friend. It took my breath away to hear Mr. Jaipal Singh giving out his dicta on the question of linguistic division of provinces. Orissa was first in the field to begin this agitation for linguistic provinces.

Mr. Vice-President : I cannot permit you to take up the time of the House with the question of linguistic provinces.

Shri Biswanath Das : I am not. But this was stated and I am replying to it. Orissa first began agitation for linguistic provinces. Others followed us. Therefore the people and the Government of India had to think about this question and the result was that the Government of India in their despatches of 1911 enunciated accepting the principle which was subsequently adopted by Congress in 1921, namely, the linguistic division of provinces and the Federation of India above them. That was the principle that was accepted not only by an alien Government, who never had sympathy for our aspirations but also by all the thinking minds of India, belonging to all schools of thought, including Muslims, Christians and other religious denominations. Therefore, it comes too late in the day in the mouth of my honourable Friend, Mr. Jaipal Singh now to decry this position. If you want an Adibasi-stan, by all means demand it and those who want to concede it let them say so openly. I am not here to side-track issues. The difficulties such as those pointed out should be borne in mind and I appeal to my friends to take a serious view of the difficulties that I have placed before them and the finances that are required to put into operation article 23 in this regard. Though I bow down to the joint wisdom of the House and my party, I must clearly state before the honourable Members of this House that I do protest against some of these provisions and I have already stated my arguments.

Shri O. V. Alagesan (Madras : General): Sir, this clause seeks to conserve the scripts and languages of sections of citizens. It is very necessary, in view of the fact that the various provincial scripts are now being threatened with extinction, if I may say so.

There is a point of view put forward that the Devanagiri script should be substituted for all the provincial scripts. The All India University Teachers Convention which recently met in Delhi under the chairmanship of a well known political leader has passed a resolution that there should be a common script for all the Indian languages. When it is recognised that the various provincial languages of India are more ancient, more developed and richer in content and expression than the common language, Hindi, it will be realised that this step will cause great dissatisfaction and heart-burning. It is said that there is no organic unity between the script and the language. I do not know. It is for eminent educationists to offer their opinion on the matter. All I can say is that there are certain special sounds in every language which can be expressed only by the ancient script with which the language has been associated. It is not possible otherwise.

This idea was even mooted by Mahatma Gandhi once but he at once saw the inherent contradiction in the position that obtained in the country. We have got for one and the same language two scripts. For Hindi or Hindustani there are two scripts, namely the Arabic or Persian and the Devanagri scripts. So he gave up the idea and began himself learning the various provincial scripts.

In this matter of scripts and languages I say that the Government of the Union should follow an enlightened policy, similar to that being followed in the U.S.S.R. There they did not countenance the idea of imposing the Russian language or script on the other linguistic minorities. They called such imposition by the name of Russian Chauvinism. I do not want Devanagri

Chauvinism to be countenanced in this country also. In the U.S.S.R. there were languages without scripts. They went out of the way to provide scripts for them. They did not provide the Russian script but they provided the Latin script. Similarly in India there are languages without scripts. The Konkani language which is spoken by the honourable Father De'Souza, an eminent member of the House, is without a script. Tulu is another spoken language without a script and I think many of the Adivasi languages are without scripts and for each of these languages the Government should provide the alphabet. This clause should be interpreted rather liberally and we should provide scripts for languages without scripts, in which case I have no objection if the Devanagri script is provided for such languages. But to say that we will provide Tamil, for instance, with the Devanagri script is something understandable and inconceivable; and what is the object with which such a proposition is propounded? The object is to achieve inter-provincial unity. Instead of achieving inter-provincial unity I know such a step will hamper it. So it is necessary, when we are going to evolve or decide upon a common All-India language for governmental and administrative purposes, we should not aggravate the situation by saying anything about the script or by speaking of the abolition of the various provincial scripts. By trying to preserve and conserve and advance the provincial scripts and languages we will, I think, evolve greater national solidarity and unification. Sir, I commend this clause for the acceptance of the House.

The Honourable Pandit Govind Ballabh Pant (United Provinces : General): Sir, I am sorry that I have to intervene in this debate. I had no such intention. I had imposed a self-denying ordinance upon myself and have as a rule refrained from encroaching upon the time of the House. I want the time that we have at our disposal to be economised and the Constitution to be adopted as speedily as may be possible. But for the remarks made by one of the Speakers I would not have come to the microphone today. The observations made by Mr. Lari have compelled me to make a few remarks which I think will remove any misunderstanding that his speech might otherwise have created.

So far as this clause is concerned I fully support it. Luckily Mr. Lari has not said that anything has been done in my province against the letter or spirit of this clause. So far as that goes he has not made any assertion or instinuation.....

Mr. Z. H. Lari : I was speaking on the amendment, and had to confine myself to that.

The Honourable Pandit Govind Ballabh Pant : So you admit that so far as this particular clause that has been accepted by the Union Powers Committee and the Drafting Committee is concerned there is nothing that is being done which can be said even by Mr. Lari as being against the letter or spirit of this clause. He thinks that it is not adequate enough for his purpose and therefore he wants it to be amended.

Mr. Z. H. Lari : No, I could say a lot but had no occasion.

The Honourable Pandit Govind Ballabh Pant : So far as his amendment goes, I think many speakers have commented on it and have controverted the arguments advanced by him. I do not consider it necessary to add to the weight of the arguments that have been put forward by them. I should, however, like to mention some facts and some principles which have to be borne in mind. We in this Union of India owe a duty to all citizens who live in this land and we have to do things in such a way as would enable us to make the maximum use of the resources that are available today or that may be available tomorrow. Mr. Lari cannot expect us to feed the fad of anybody at the expense of the tax-payer. In our country, vast numbers are illiterate and they have to be given the benefit of at least primary education. Primary education, in order that it may be made even universal, will cost millions and millions. Now, how are

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our schools to be established and how are our schools to be run? If every school should have two or three sets of teachers, one knowing Nagari and the other knowing Urdu, indiscriminately regardless of the number of students interested in either are we capable of providing for that financially? If such a policy were followed, then we would not be able to introduce universal primary education,—not to talk of compulsory primary education,—till Doomsday. Obviously, you have to examine the situation in every place and then provide such machinery as would yield maximum results.

Sir, so far as my own province is concerned, I do not think there is any linguistic division based on religion. (Honourable Members: 'Nowhere'.) whether it be Hindi, or Hindustani or Urdu, there are many among Hindus who can speak in what is called Urdu and who can write Urdu and some who perhaps can write Urdu alone. There are many Muslims, especially in the villages, who use only Devanagri character and speak in Hindi only and know nothing else.

Maulana Hasrat Mohani : In the villages nobody speaks Hindi.

Mr. Vice-President : That is an interruption of a privileged individual. Do not mind that.

The Honourable Pandit Govind Ballabh Pant : He may rest assured that after the assurance that I have received from the Chair, I will not take notice of his remarks *(Laughter)*. As I was saying, once you bear in mind that there is no particular language attached to the followers of any particular religion, then the question of language with reference to or *vis-a-vis* any minority, does not arise at all. No language is the language of the Hindus and no language is the language of Muslims. (Honourable members: *'hear, hear'*.) Especially so far as primary education is concerned and primary classes are concerned, where education of an elementary type is given, there can be no room for any difference of opinion regarding the principle that I have just enunciated. For, in those schools only elementary ideas are propounded and they are propounded in a form which is ordinarily intelligible to everyone. So, there is no question of anything being done that might be prejudicial to any minority as such.

There are men who know Hindi and whose children may be learning Urdu. There are Hindus who know Urdu and there are Muslims who, as I said, know Hindi and Nagari character, and Nagari character and Hindi alone. So, to present it as a communal problem or as a minority problem, while the question of Fundamental Rights is being discussed, is to give it a wrong colour. I submit that the question does not arise in this connection at all.

Then Mr. Lari made some astounding remarks. He said that in Lucknow and in Allahabad, there was no place where Muslims could receive education of a primary character in Urdu. There are Islamia Schools and there are Madrassas and also Government schools and there are Muslim schools and Muslim colleges in both the places and therein hundreds of Muslim boys are receiving education. I cannot understand how Mr. Lari could have made himself responsible for such an inaccurate statement.

Mr. Z. H. Lari : I have got before me the letter from the Principal of the Basic College itself. No arrangement exists in any Government or Municipal school.

The Honourable Pandit Govind Ballabh Pant: I am coming to that. Have a little patience. So far as I am aware there has been no reduction in the number of Muslim students in our schools and colleges in the province during this year. I may also state that there has been no general complaint about any inconvenience having been caused to any class of boys by the system that is in force today. Mr. Lari had some controversy with our Minister for

Education and certain communications were published in the press. The view of Mr. Lari was controverted by some respected Muslims of my province and some Members of the legislature disagreed with him and gave expression to their views in the columns of newspapers. He is probably aware of that Mr. Ismail Ahmed's note was probably seen by him. He says no. It is not right to notice only what suits one. (*Laughter*). From that one can see what is his method of examination of public questions and of forming opinions thereon.

Now, the boys are taught in primary schools in their mother-tongue, and the mother-tongue of Hindus and Muslims and all boys is more or less the same. There is no difference whatsoever. Those who, in the olden days, were obsessed by the idea of separatism have not been able to shed it off even now, (Honourable Members: '*Hear, hear*') and the ghost of 'Two *nations*' seems to be lingering somewhere, even within the precincts of this very august Chamber. Otherwise, I think, such a bogey would not have been raised here.

I had received a letter from Mr. Lari in this connection and I consulted our Deputy Secretary and Deputy Director Mr. Ibadur Rahman Khan. I gathered from the latter that the arrangements that had been made were quite satisfactory. In the circumstances I think I am entitled to rely on the advice and information of those who know more about every school in the Province than Mr. Lari.

I may also inform honourable Members that we are still giving considerable sums by way of grants for the Islamia schools and the Madrassas to which only Muslim boys have access. So, to insinuate here that any discrimination was being made against Muslim students is hardly fair, much less can it be said to be charitable.

Coming now to the specific case of Mr. Lari's son, I tried to find out the facts and was told that there are very few boys in that class who wanted to have Urdu as their script. They were mostly, excepting perhaps a few—perhaps Mr. Lari's son was the solitary exception—satisfied with the arrangements. Mr. Lari can say how many boys were therein that class who shared his view or whose guardians shared his view and wanted.....

Mr. Z. H. Lari : All shared my view, but the principal said: 'Nothing of the sort'. "No option was permissible".

The Honourable Pandit Govind Ballabh Pant : So far as I am aware his boy is the only one in the class who desired this separate arrangement (*Laughter*). Now, there are no doubt schools in Allahabad where Devanagari character which has been accepted as the National script of the Province is in use.

He could however have sent his boy to one of the other Islamia schools and to other schools where the Urdu script is adopted and training in the form and in the manner which would have suited Mr. Lari is given. Does he expect the House to accept that where there is one boy, where there are ten boys, there should be two sets of teachers, one for nine hundred or a thousand boys and the other for ten? If so, how is the cost to be met? How are we to explain this to the taxpayer? Then, one has to take into account also the fact that there are not only men who want this script or what they regard as high-flown Urdu to be adopted in the schools but we have also certain cosmopolitan cities where we have fair numbers of Maharashtrians, Gujaraties and others. Should we then have, because there are five or ten Bengali boys or because there are five or ten Gujarathi boys, different sets of teachers who will give instruction in Bengali or in Marathi or in Gujarathi or in Telugu for the benefit of the few boys that are there? Nobody can accept that and they have never asked for it. They have accepted the position and

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they have always been contented with the arrangements that have been made. Now, if anyone presses here for an arrangement under which anyone wishing to give preference to Urdu should be provided with a new set of teachers in every school to give training in that script and in that language. I am afraid the government will not be able to meet his wishes. It is not possible for any Government to do that, and Mr. Lari has himself accepted the amendment, so far as I understand, that was moved here that such arrangements should be made only where there are substantial numbers. I think that amendment was moved by Kazi Syed Karimuddin.

"in case of substantial number of such students being available."

Now, these are exactly our instructions that where substantial numbers of such students are available, arrangements should be made; where the numbers are not substantial, then we cannot incur such expenditure. Can anything be more equitable, can anything be more generous? The fundamental article that we are adopting here does not require us to make any provision like that at all. It only gives freedom to the followers of a language which is different from the national language, from the State language, to preserve their language. It does not require the government to make any special provision for them. But we have gone much beyond that, and we have given special privileges. We have made necessary arrangements for them. There are thousands and thousands of such boys who are receiving instruction today and we are spending large amounts on their education. We want to encourage education among them, to attract even large numbers, to make things as easy as may be possible, but there is a limit beyond which no government can go, and I sometimes find myself in a very difficult position and feel a little distressed, if not dismayed, by the charges that are glibly made in utter disregard of attempts sincerely and earnestly made by us to accommodate every section of the people and to give every possible facility to every single individual in the province. We hope that such statements of an irresponsible character will not be made and more than that, that nobody here will allow himself to be misled by the sort of remarks which are neither based on facts, nor are correct, and which ignore the duty of the State to the general body of citizens and the obligations that the State owes to the vast majority of people living under its protection. In a case like this, to raise a linguistic problem in a manner like this as though it was is a communal problem is most unfortunate. Instead of helping the cause which I would like to assist to the best of capacity, it will create difficulties and hurdles. I hope greater care will be taken in dealing with such questions in future.

An Honourable Member : The question be now put.

Mr. Vice-President : Motion for closure has been moved and I would call upon Dr. Ambedkar to speak. Or do you want to prolong the discussion?

Honourable Members : No.

Maulana Hasrat Mohani : Sir, an exception should be made in my case and I will be glad if will give me some time to speak. I gave notice of an amendment but I was cheated by Dr. Ambedkar. Please allow me to have me say.

Mr. Vice-President : All right, please come to the mike.

Maulana Hasrat Mohani : *[Sir, my intention was simply to move an amendment to amendment No. 691 here which sought to amend the amendment to be moved by Dr. Ambedkar. But later on when other amendments were also moved, one of these amendments, No. 676 was moved by Mr. Lari. I whole-heartedly support it. The reason is, as Mr. Lari stated, that the Sub-committee which was appointed by this House to deal with the Fundamental Rights had unanimously laid down the following principle:—

"Minorities in every Unit shall be protected in respect of their script and culture and no laws regulating them may be enacted".

This is a comprehensive principle. I fail to understand how Dr. Ambedkar could frame a new principle and introduce an altogether different proposal in the Draft. Mr. Lari had raised serious objections to it. I, too, seriously protest against it. He should not have done so. It was passed by the Committee in May 1947, and was adopted by the House.

Now, I would like to say something about the amendment which I had moved in this connection. As certain events have occurred and Mr. Pant, the Premier of my province and Mr. Santhanam have said something about this, I would like to reply to them briefly. It is this: Mr. Santhanam has said that the amendment of Mr. Lari, namely, amendment No. 676, would certainly give us protection. He also stated that language and script are included in it and when after fifteen years, this question will be settled, then we shall consider it. Then again, when Mr. Lari raised the point as to what would be done in our province; the reply was: "The decision of the Central Government is not binding as Education is a provincial subject." That is why the Advisory Committee has not accepted it. It is not going to accept it. The reply given was: "you will have to flatter the majority of your province. They will decide." I say: What is the idea of fixing a time limit of fifteen years? I would like to mention what the attitude of the Government has been in the United Provinces uptil now. Wherever Englishmen came, they introduced English, but it was only higher education which was imparted through the medium of English. Justice demands that we should 'give the devil its due'. I will praise them to this extent that they had fixed English only for the purpose of higher education. So far as secondary and primary education was concerned, they had introduced the same system which is in vogue in our province up till now. There was separate vernacular educational institution for Vernacular Middle Education. There were high schools for imparting education through the medium of English. That is to say, for those who wanted to accept English as medium of instruction in higher education, the high school medium of instruction used to be English. For those who did not want it, there were Vernacular schools everywhere in the districts. Mr. Pant asked how it was possible to bear double and triple expenses. How have we been doing it up till now? Was not Vernacular in use up till now? Was not this arrangement made in every town, in every village and in every district? And is it not a fact that those whose mother tongue was Urdu, if they wanted to use Urdu script up to secondary stage, were allowed to do so up to the Middle Standard? This was adopted even by those who claimed Hindi as their mother tongue and in fact they used to speak in Hindi. Those who wanted to go up to Intermediate and B.A. Classes for learning English, they used to get themselves admitted in high schools. The least that I would demand of my provincial government is this: Leave the question of fixing a common language to the Union. I have absolutely no concern with that. You may decide to have Hindustani or Hindi or Sanskrit as your interprovincial language. Do whatever you like, but the question of medium of instruction and language to be followed in each province should

* [ ] Translation of Hindustani Speech.

[Maulana Hasrat Mohani]

be distinct. If you want to accept Hindi for the United Provinces I have no objection. But so far as medium of instruction is concerned, as long as Urdu is our mother tongue, it is ours by right and forms part of the Fundamental Rights. Today, if it is demanded of the Government to provide education for the people through the medium of their mother tongue and their script, arrangements shall have to be made in Government Schools and if you will not do it—then.....]

An Honourable Member : You may go to Pakistan.

Maulana Hasrat Mohani : *[You may go to Hindukush and settle there from where you have come. Why we should go? We have come from Central Asia.]

Mr. Vice-President : It is cruel on the part of honourable Members to bait an old gentleman.

Maulana Hasrat Mohani: *[If it is so, then in reply I would tell both Mr. Pant and Mr. Santhanam, as they too have asked where the money is to come from and how it would be possible to make duplicate arrangements, in case there is only one student, I say that the assertion just made that the Muslims residing in villages speak Hindi language is totally wrong. I challenge Pandit Pant or anyone else, who so desires, to accompany me to any village and talk to a Muslim on any subject in Hindi. He will get the reply in Urdu. They speak cent per cent Urdu. It is another thing that we say 'Khushi' while they may pronounce it as 'Khusi'. We say 'Hafiz' while they may pronounce it as 'Hafij'. We say 'Gharib', and they may say 'garib'. We say 'Naqd', and they may say 'Nagad'. Beyond that, there is no other difference. I will accept your contention that Hindi is the mother tongue of the village people only when you go to any village and ask this question to a villager: "Kya 'Barsat' shuru ho gai?" His reply would be, "Barkha shuru ho gai". But that is pure Urdu. I shall accept your assertion if he replies that 'Barkha arambh ho gai hai'. If he uses the word 'arambh' I will agree that Hindi is his mother tongue. If he uses the word 'shuru' then that would be Urdu. My claim is that cent per cent people of U. P. speak Urdu. Those who say that the language spoken by the U.P. Muslim is Hindi, are totally in the wrong. I challenge you to hold a referendum on this issue. If you cannot do that, then look to the language used in the villagers' programmes by the A.I.R. It would reveal to you that they pronounce 'Khushi' as 'Khusi'. Seldom a Sanskrit word is used in their language. If that is so, how can you say that the language of the rural areas is Hindi? Therefore, I challenge you on the point. You have no right to say that Hindi is the language of U. P. villages. So much about the amendment of Mr. Lari.

I would appeal to Honourable Dr. Ambedkar to accept, as being the decision of the House, and of our Fundamental rights Committee, amendment No. 676 which has been moved by Mr. Lari. You may accept or reject it. It depends on your sweet will. You have a majority with you which consists mainly of one party.

I oppose the amendment; put it to the vote. Where is the use of having the farce of this Constituent Assembly?]

Mr. Vice-President : I cannot allow you to use this expression (*Interruption*): Kindly take your seat. I am quite able to maintain order in the House without your assistance. Maulana Saheb, you have already taken ten minutes; I will give you only two minutes more.

Maulana Hasrat Mohani : *[I want only five minutes. I will finish within five minutes.]

Mr. Vice-President : All right.

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* [ ] Translation of Hindustani Speech.

Maulana Hasrat Mohani : *[Now I want to say a few words about my amendment, which is an amendment to the amendment, not yet moved by Dr. Ambedkar. As my amendment has been declared out of order, I want to say something about it.

After great deliberation I submitted my amendment to Dr. Ambedkar's amendment No. 691 because it so happens that an amendment or any other thing put forth by him is generally accepted and so along with that mine too might have been accepted and Honourable Vice-President too, who has been vested with discretionary powers to allow or disallow a motion, selected No. 691 out of so many others, *viz*., out of 691, 692, 693, 694, 696, 697 and 698, which are all of similar import, to be moved in the House. Is it justice not to allow me to move it now? Why does not Dr. Ambedkar move his amendment? I think it has not been moved because thereby the minorities would have got their right in full.

It is made clear that every important minority shall have the right to receive education in its own mother tongue and script.]

Pandit Thakur Dass Bhargava : *[Maulana Sahib! May I tell you that article 23 (2) has nothing to do with language or script. It is regarding the right of admission into the educational institutions.]

Mr. Vice-President: Pandit Thakur Dass Bhargava, you should address the Chair. I am sorry I should have to point this out to you.

Maulana Sahib, I have given you another five minutes.

Maulana Hasrat Mohani : *[Only two or three sentences, Sir. I am finishing. Therefore I want to state that the Advisory Board too have decided that every one has the right to receive education in his own mother tongue. In relation to University Education also it has been decided that medium of the mother tongue would be retained. Hence, you have got no right to avoid it.

The question of language and script is of very great importance. The fall of Turkish Empire was because it attempted to force their language upon others. As their rule has come to an end, similarly you will also not be able to rule.]

Shri Satyanarayan Sinha (Bihar : General) : The question be now put, Sir.

Mr. Vice-President : Two more requests have been made. I do not think I can allow this discussion to continue. Dr. Ambedkar.

Pandit Hirday Nath Kunzru (United Provinces : General): Sir, this subject is an important one. Will you be so indulgent as to allow me to speak?

Mr. Vice-President : We are always prepared to hear you. Our only regret is you do not speak very often.

Pandit Hirday Nath Kunzru: Mr. Vice-President. Sir, the subject that we are discussing today is one of fundamental importance. We are dealing with Fundamental Rights. We have tried to approach this subject in such a way as to ensure the people of India in general and the members of various classes and communities in particular that their basic rights will be fully safeguarded by the State. One of the most important rights that any community can claim relates to language and culture. I am not surprised therefore that clause 23 has led to a prolonged discussion. The article as it is gives such minorities as have a distinct language, script and culture, the right to conserve them. But it is not clear whether in the primary schools started by Government the languages and scripts of the minorities will be taught in case the parents of a substantial number of the pupils demand that their children should be given instruction in their own languages.

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* [ ] Translation of Hindustani Speech.

[Pandit Hirday Nath Kunzru]

Sir, this is a subject of the utmost importance. Anyone acquainted with the history of Eastern Europe knows what conflicts the denial of the claims of the minorities on this subject have led to. One of the most important questions that engaged the attention of the League of Nations was the protection not merely of the general civil rights of the minorities but also of their right to use their own language in areas where they formed a substantial proportion of the population. The amendment moved by my friend Mr. Lari as amended by Mr. Karimuddin's amendment seems to be one that deserves the serious and sympathetic consideration of the House. Though put forward in the interests of the Muslim community it will afford protection to all minority communities. India is not the only country where there is a diversity of language. There are other countries too where people speak more than one languages. The most not able case is that of Russia. There is one language that serves as the *Lingua Franca* of the territories ruled over by the Russian Government and that is Russian. But at the same time the development of the local languages is encouraged and every effort is being made to raise the culture of the local communities to a high pitch. Russia has gone so far in this direction as to give a script even to those communities under its rule that possessed none before. It has thus assured all the communities subject to it that it proposes to grant them complete protection in regard to all those distinctive things that they value, to all those things that enable them to take pride in their own history and achievement, in all those things that make them feel that they have not merely received benefits from other communities but have also been in a position to place something of value before them. If our Muslim friends today, actuated by a similar feeling, demand that their children should be given instruction in primary schools through their own language and script, where a sufficient number of them asks for this, the demand cannot be considered as extravagant. It is a demand which we should, if we are actuated by justice, be ready to grant.

Pandit Thakur Dass Bhargava : Who is opposing this demand?

Pandit Hirday Nath Kunzru: In view of the heated discussion that has taken place and my inability to understand whether the amendment was going to be accepted or not, I have thought it necessary to place my own views before the House. If my Friend Pandit Thakur Dass Bhargava has guessed the feeling of the House accurately no one will be happier than myself.

Pandit Thakur Dass Bhargava : The Honourable Pandit Govind Ballabh Pant has accepted the principle in his speech.

Pandit Hirday Nath Kunzru: I was not in the House when Pandit Govind Ballabh Pant spoke but my information is that the amendment moved by Mr. Lari as amended by Kazi Karimuddin has not been accepted by Pandit Pant, or Dr. Ambedkar.

Pandit Thakur Dass Bhargava : It has not been accepted because it is not justiciable as the right to primary education itself is not justiciable at present.

Pandit Hirday Nath Kunzru : Sir, now my honourable Friend Pandit Thakur Dass Bhargava shifted his ground. He says that the amendment has not been accepted because the right is not justiciable. Does this mean that he too is going to oppose the amendment of article 23 in the sense demanded by Mr. Lari? If he is, then what was the point of his question? How did he get up and ask, who was opposing the amendment?

Mr. Vice-President : I am sorry I permitted the first interruption. It is leading to endless trouble.

Pandit Hirday Nath Kunzru : Sir, I am grateful to you for permitting it, for it has enabled me to clarify my position and to understand where my honourable Friend Pandit Thakur Dass Bhargava stands. If the only objection of the House to the insertion of Mr. Lari's amendment to article 23 is that

it is not justiciable, will Government give an undertaking that this amendment will form part of the Chapter containing the Directive Principles of State Policy?

An Honourable Member : There is no Government here.

Pandit Hirday Nath Kunzru : After all Dr. Ambedkar who is the Chairman of the Drafting Committee is the Law Minister of the Government of India.

Mr. Vice-President : That is accidental.

Pandit Hirday Nath Kunzru : If he is prepared to say that the principle underlying the amendment will be included in Part IV, I for one shall be perfectly satisfied. But an Honourable Member says that he is not prepared to accept it. It should be obvious now to my friend Pandit Thakur Dass Bhargava that it is necessary for one who is for full tolerance in the matter of language, script and culture, to stand before this House and place his convictions before it. I am very sorry, indeed, to find from the interruptions of a number of my friends that the general feeling in the House is against Mr. Lari's amendment. Frankly, Sir, I cannot understand members standing up for full rights for the minorities objecting to the claim put forward on behalf of the Muslim community, by Mr. Lari. The amendment put forward by him might have seemed to be too wide, for if it were accepted, it would enable the Muslim community to claim that Urdu should be taught even when there was one boy in a school who wanted to learn it. But the amendment of Mr. Karimuddin has completely removed that fear, and Mr. Lari, I understand, has accepted that amendment.

Mr. Z. H. Lari : Yes.

Pandit Hirday Nath Kunzru: It is therefore, clear that the Muslim community will be able to exercise the right asked for by Mr. Lari only where a substantial number of Muslim students are available to profit by instruction in Urdu. I ask the House whether on any ground of justice and tolerance, they can deny such a reasonable claim. It does not interfere in the least with the establishment of a *lingua franca* for the whole of India. (Honourable Member: it does, it does.) It does not, in the least. If my honourable Friend reads the history of Eastern Europe and of Russia with a dispassionate mind (Honourable Members : Why not Indian history?), he will find that his fears are completely groundless. The dissatisfaction of the minorities has risen to a dangerous pitch only in those countries where their just claims in respect of the preservation and promotion of their culture have been denied. But those countries that have treated the minorities justly in this respect have received their full support in the political sphere. I ask my countrymen to profit by these examples and take a warning from the history of Eastern Europe. Comparative peace was restored in Eastern Europe only when the League of Nations was able to intervene as far as was practicable in the circumstances to protect the language and culture of the minorities. Do we want, in utter disregard of this history, to pursue the dangerous path of fanatical nationalism as the majorities in Eastern Europe did for a number of years? An honourable Member asks me what led to the second world war. I have never claimed that there has been only one cause of conflict throughout the world. Many causes have led to wars in the past, and are still keeping the nations of the world estranged from one another. But does that mean that we may thoughtlessly add to these causes and deny elementary justice to the minorities, because we have it in our power to pass any measures that we like? The mere fact that that power is in our hands should make us pause, and go out of our way to treat the minorities generously. My friends, I request you with all the earnestness at my command, I request you as a humble servant of the

[Pandit Hirday Nath Kunzru]

mother-land, I request you as one of your sincere well-wishers to think seriously before you reject Mr. Lari's reasonable amendment. It does not go beyond the necessities of the case; and we shall be putting ourselves hopelessly in the wrong if we use our majority tyrannically to turn it down. I hope that the House, notwithstanding the feeling that the discussion has excited, will consider the matter dispassionately and in a spirit of justice, toleration and generosity accept Mr. Lari's amendment.

Mr. Vice-President : Dr. Ambedkar.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I have to say something, and.....

Mr. Vice-President : I cannot allow the discussion to be prolonged any longer, and my decision is final in this matter.

Prof. Shibban Lal Saksena : To allow some people and not to allow others is not proper.

Mr. Vice-President : I know it is considered improper. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, of the amendments which have been moved to article 23, I can accept amendment No. 26 to amendment No. 687 by Pandit Thakur Dass Bhargava. I am also prepared to accept amendment No. 31 to amendment No. 690, also moved by Pandit Thakur Dass Bhargava. Of the other amendments which have been moved I think there are only two that I need reply to, they are, No. 676 by Mr. Lari and amendment No. 714 also by Mr. Lari. I think it would be desirable, if in the course of my reply I separate the questions which have arisen out of these two amendments.

Amendment No. 676 deals with cultural rights of the minorities, while the other amendment No. 714, raises the question whether a minority should not have the Fundamental Right embodied in the Constitution for receiving education in the primary stage in the mother tongue.

With regard to the first question, my Friend, Mr. Lari, as well as my Friend, Maulana Hasrat Mohani, both of them, charged the Drafting Committee for having altered the original proposition contained in the Fundamental Right as was passed by this House. It is quite true that the language of paragraph 18 of the Fundamental Rights Committee has been altered by the Drafting Committee, but I have no hesitation in saying that the Drafting Committee in altering the language had sufficient justification.

The first point that I would like to submit to the House as to why the Drafting Committee thought it necessary to alter the language of paragraph 18 of the Fundamental rights is this. On reading the paragraph contained in the original Fundamental Rights, it will be noticed that the term "minority" was used therein not in the technical sense of the word "minority" as we have been accustomed to use it for the purposes of certain political safeguards, such as representation in the Legislature, representation in the services and so on. The word is used not merely to indicate the minority in the technical sense of the word, it is also used to cover minorities which are not minorities in the technical sense, but which are nonetheless minorities in the cultural and linguistic sense. For instance, for the purposes of this article 23, if a certain number of people from Madras came and settled in Bombay for certain purposes, they would be, although not a minority in the technical sense, cultural minorities. Similarly, if a certain number of Maharashtrians went from Maharashtra and settled in Bengal, although they may not be minorities in the technical sense, they would be cultural and linguistic minorities in Bengal. The article intends to give protection in the matter of culture, language and script not only to a minority technically, but also to a minority in the wider sense of the terms as I have explained just now. That

is the reason why we dropped the word "minority" because we felt that the word might be interpreted in the narrow sense of the term, when the intention of this House, when it passed article 18, was to use the word "minority" in a much wider sense, so as to give cultural protection to those who were technically not minorities but minorities nonetheless. It was felt that this protection was necessary for the simple reason that people who go from one province to another and settle there, do not settle there permanently. They do not uproot themselves from the province from which they have migrated, but they keep their connections. They go back to their province for the purpose of marriage. They go back to their province for various other purposes, and if this protection was not given to them when they were subject to the local Legislature and the local Legislature were to deny them the opportunity of conserving their culture, it would be very difficult for these cultural minorities to go back to their province and to get themselves assimilated to the original population to which they belonged. In order to meet the situation of migration from one province to another, we felt it was desirable that such a provision should be incorporated in the Constitution.

I think another thing which has to be borne in mind in reading article 23 is that it does not impose any obligation or burden upon the State. It does not say that, when for instance the Madras people come to Bombay, the Bombay Government shall be required by law to finance any project of giving education either in Tamil language or in Andhra language or any other language. There is no burden cast upon the State. The only limitation that is imposed by article 23 is that if there is a cultural minority which wants to preserve its language, its script and its culture, the State shall not by law impose upon it any other culture which may be either local or otherwise. Therefore this article really is to be read in a much wider sense and does not apply only to what I call the technical minorities as we use it in our Constitution. That is the reason why we eliminated the word "minority" from the original clause.

But while omitting this word "minority" I think my Friend, Mr. Lari forgot to see that we have very greatly improved upon the protection such as was given in the original article as it stood in the Fundamental Rights. The original article as it stood in the Fundamental Rights only cast a sort of duty upon the State that the State shall protect their culture, their script and their language. The original article had not given any Fundamental Right to these various communities. It only imposed the duty and added a clause that while the State may have the right to impose limitations upon these rights of language, culture and script, the State shall not make any law which may be called oppressive, not that the State had no right to make a law affecting these matters, but that the law shall not be oppressive. Now, I am sure about it that the protection granted in the original article was very insecure. It depended upon the goodwill of the State. The present situation as you find it stated in article 23 is that we have converted that into a Fundamental Right, so that if a State made any law which was inconsistent with the provisions of this article, then that much of the law would be invalid by virtue of article 8 which we have already passed.

My Friend, Mr. Lari and the Maulana will therefore see that there has been from their point of view a greater improvement than what was found in the original article. Certainly there has been no deterioration in the position at all as a result of the change made by the Drafting Committee.

Coming to the other question, namely, whether this Constitution should not embody expressly in so many terms, that the right to receive education in the mother tongue is a Fundamental Right: Let me say one thing and that is

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that I do not think that there can be any dispute between reasonably-minded people that if primary education is to be of any service and is to be a reality it will have to be given in the mother tongue of the child. Otherwise primary education would be valueless and meaningless. There is no dispute, I am sure, about it and in saying that I do not think it necessary for me to obtain the authority of the Government to which I belong. It is such a universally accepted proposition and it is so reasonable that there cannot be any dispute on the principle of it at all. The question is whether we should incorporate it in the law or in the Constitution. I must frankly say that I find some difficulty in putting this matter into a specific article of the Constitution. It is true, as my honourable Friend Pandit Kunzru observed, that the difficulty that might be felt in administering such a Fundamental Right is to some extent mitigated or obviated by the amendment moved by my Friend Mr. Karimuddin *viz.*, that such a principle should become operate in the case a substantial number of such students were available. I would like to draw the attention of my friend Mr. Karimuddin that his amendment does not really solve the difficulty, which stands in the way of his accepting the principle. First, who is to determine what is a substantial number? Let me give an illustration. Supposing the matter is to be left to the Executive, as it must be, and the Executive made a regulation that unless there were 49 per cent of such children seeking education in a primary school then and then only it will be regarded as a substantial number. Will that satisfy him if such an authority was left with the Executive? Then supposing you make this matter a justiciable matter, as it undoubtedly would be when you are introducing it as a Fundamental Right and no Fundamental Right is fundamental unless it is justiciable, is it proper, is it desirable that the question whether in any particular school a substantial number was available or not should be dragged into a court of law, to be determined by the court? I cannot see any other way out of the difficulty. Either you must leave the interpretation of the word "substantial" to the Executive or to the judiciary and in my judgment neither of the methods would be a safe method to enable the minority to achieve its object. Therefore my submission is that we should be satisfied with the fact that it is such a universal principle that no provincial government can justifiably abrogate it without damage to a considerable part of the population in the matter of its educational rights. Therefore I submit that the article as amended should be accepted by the House.

Mr. Vice-President : The question is:

That for article 23, the following article be substituted:—

"23. Without deteriment to the spiritual heritage and the cultural unity of the country, which the State shall recognise, protect and nourish, any section of the citizens residing in the territory of India or any part thereof, claiming to have a distinct language, script and culture shall be free to conserve the same."

The motion was negatived.

Mr. Vice-President : The question is:

That for article 23, the following article be substituted:—

"(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."

The motion was negatived.

Mr. Vice-President : The question is:

That in clause (1) of article 23, for the words "script and culture" the words "script or culture" be substituted.

The motion was adopted.

Mr. Vice-President : The question is:

That with reference to amendment No. 678 of the List of Amendments

in clause (1) of article 23, for the words "residing in the territory of India or any part thereof" the words "residing in any part of the territory of India" be substituted.

The motion was negatived.

Mr. Vice-President : The question is:

That in clause (1) of article 23, after the word "conserve" the word "develop" be added.

The motion was negatived.

Mr. Vice-President : The question is:

That in clause (3) of article 23, the word "community" wherever it occurs be deleted.

The motion was adopted.

Mr. Vice-President : The question is:

That for clause (2) of article 23, the following be substituted:—

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them; and sub-clauses (a) and (b) of clause (3) of article 23 be renumbered as new article 23-A."

The motion was adopted.

Mr. Vice-President : The question is:

That for sub-clause (a) of clause (3) of article 23, the following be substituted:—

"(a) Linguistic minorities shall have the right to establish, manage and control educational institutions for the promotion of the study and knowledge of their knowledge and literature, as well as for imparting general education to their children at primary and pre-primary stage through the medium of their own languages."

The motion was negatived.

Mr. Vice-President : The question is:

That the following proviso be added to sub-clause (a) of clause (3) of article 23:—

"Provided that no part of the expenditure in connection with such institutions shall fall upon or be defrayed from the public purse; and provided further that no such institution, nor the education and training given therein shall be recognised, unless it complies with the courses of instruction standards of attainment, methods of education and training, equipment and other conditions laid down in the national system of education."

The motion was negatived.

Mr. Vice-President : Does the Honourable Member, Mr. Lari accept amendment No. 53 on List III standing in the name of Kazi Karimuddin?

Mr. Z. H. Lari : Yes, Sir, I do.

Mr. Vice-President : Does he also accept the amendment of Begum Aizaz Rasul?

Mr. Z. H. Lari: I do not.

Mr. Vice-President : Then I shall put to the House amendment No. 714 as amended by amendment No. 53 on List III standing in the name of Kazi Karimuddin.

Shri Rohini Kumar Chaudhari (Assam : General): On a point of order, Sir, I would ask whether in the absence of the Member who has moved the amendment; his amendment could be put to vote.

Mr. Vice-President : Is Mr. Chaudhari certain that the absence of Kazi Syed Karimuddin from the House would automatically close his amendment from being voted upon?

Shri Rohini Kumar Chaudhari : No, because it is acceptable to Mr. Lari who is in the House and whose amendment is being voted upon.

Mr. Vice-President : I am going to put the question now.

Pandit Thakur Dass Bhargava : Before you put the question, I want to raise a point of order. In my humble opinion, the subject matter of this amendment No. 714 cannot be justiciable because we have not made primary education itself justiciable. Therefore this amendment is itself out of order. When the primary right to primary education is not justicable or capable of being enforced in a court of law, this ancillary right cannot be made justiciable and hence this amendment cannot be put to the House. It is out of order, and no Fundamental Right can be based upon it.

Shri L. Krishnaswami Bharathi (Madras: General): It is now too late to raise this point of order.

Mr. Vice-President : That is what I was going to say. It is too late now to raise this objection.

Pandit Thakur Dass Bhargava : I raised this objection earlier, when Pandit Kunzru was speaking.

Mr. Vice-President : I am going to put the amendment to vote.

The question is:

That after clause (3) of article 23, the following new clause be inserted:—

"(4). Any section of the citizens residing in the territory of India or any part thereof having a distinct language and script shall be entitled to have primary education imparted to its children through the medium of that language and script in case of substantial number of such students being available."

The motion was negatived.

Maulana Hasrat Mohani : I call for a Division.

Mr. Vice-President : I cannot allow a Division because the voices are quite decisive. I want honourable Members not to do anything by which the time of the House would be wasted. I am very sorry and regret that my request—a very reasonable one—was not accepted.

Mehboob Ali Baig Sahib Bahadur (Madras : Muslim): May I speak at this stage, Sir?

Mr. Vice-President : It is too late now.

Now, before putting the amendment of Begum Aizaz Rasul to vote, as it was not circulated to Members, I shall read it out:

In the amendment of Mr. Lari, No. 714, for the words "section of the citizens" after the word 'Any', substitute the word 'minority'.

The question is:

That the amendment be adopted.

The motion was negatived.

Mr. Vice-President : Now I shall put the article, as amended, to vote.

Pandit Hirday Nath Kunzru: I am sorry to interrupt the proceedings. But if some Members of the House want a Division on this question with a view to finding out how many are for and how many are against the motion of Mr. Lari, I do not think the time of the House will be wasted if your grant their request. Just by a show of hands the number of those who vote either way could be known.

Mr. Vice-President : It can be done if there is a sufficiently large demand for it. Still, I would impress upon you one fact and that is it is good to preserve the goodwill of the House. And this is not the way to do it. I would request you to consider my proposal once again. Wherever possible, I have given every possible facility to every minority and so much time that the majority has sometimes been deliberately reduced to a minority by me. I expect

sincerely that the minorities will accept what I say. This is one of the ways in which I would request them to co-operate with me. If not, I am prepared to accede to their request. What is your decision?

Honourable Members : Yes.

Mr. Vice-President : Now I shall put the article, as amended, to vote.

The question is:

That article 23, as amended, stand part of the Constitution.

The motion was adopted.

Article 23, as amended, was added to the Constitution.

Mr. Vice-President : Thank you, Gentlemen. The House stands adjourned to Ten of the Clock on Thursday, the 9th December 1948.

The Assembly then adjourned till Ten of the Clock on Thursday, the 9th December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 9th December, 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—(*contd.*)

New Article 23-A

Mr. Vice-President (Dr. H. C. Mookherjee): Our work for today starts with the consideration of amendment No. 716. It stands in the name of Professor K. T. Shah.

Prof. K. T. Shah (Bihar : General): Mr. Vice-President, Sir, I beg to move:

"That under the heading "Right to Property" the following new article be added:

'23-A. All forms of natural wealth, such as land, forests, mines and minerals, waters of rivers, lakes or seas surrounding the coasts of the Union shall belong to the people of India. No private property shall be allowed in any of these forms of the country's wealth; nor shall they be owned, worked, managed or developed, except by public enterprise exclusively.' "

Shri B. Das (Orissa : General): On a point of order, Sir, how can 23-A about nationalisation of property be moved when we have not dealt with article 24 which deals with the right of property. I would respectfully suggest that, if you allow Professor Shah to move article 23-A, it may be moved after we have dealt with article 24.

Prof. K. T. Shah : I would point out, Sir,....

(Shri B. Das rose to speak.)

Mr. Vice-President : I want to hear what Professor Shah has to say.

Prof. K. T. Shah : There is a misapprehension on the part of Mr. Das. This does not talk of nationalising all existing private property. I am only enunciating a principle which may in legal parlance be called the right of eminent domain of the State. Therefore it is merely an assertion that natural wealth belongs to the people, to the State. That does not mean that that which is already in private possession is to be nationalised. Nor does it exclude the possibility of lands, forests, etc. being held, as delegated owners, by the present holders or subsequent holders under the eminent domain of the State. I see no difficulty in this.

Shri B. Das: My view is that article 24 deals with right to property, whether it belongs to a private citizen or to the State. This amendment can only be discussed when we discuss article 24 and Professor Shah can move his amendment afterwards.

Shri R. K. Sidhwa (C. P. & Berar : General): Mr. Vice-President, I think that what my honourable Friend Mr. Das said is quite correct. We are discussing article 23—cultural and educational rights—and if this article is passed....

Mr. Vice-President : The honourable Member need not repeat what Mr. Das has already said.

Shri R. K. Sidhwa : I am only emphasising it, Sir, to draw your attention.

Syed Muhammad Saadulla (Assam : Muslim): Mr. Vice-President, Sir, may I draw your attention to the motion itself as I read it at page 75 of the notice of amendments? Prof. Shah's amendment runs as follows: "That under the heading 'Right to Property', the following new article be added" and "Right to Property" is the heading of article 24 and not of 23.

Mr. Vice-President : I rule that Prof. Shah be allowed to move this amendment under 24-A. So far as amendment Nos. 717 and 718 are concerned, they are already covered by the earlier decisions of this House relating to Directive Principles.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : Those rights which are not justiciable are covered but those in connection with fundamental rights have not been covered at all. At that time an understanding was reached that this will be considered along with the Fundamental Rights.

Mr. Vice-President : Is it your contention that these both should go under the Directive Principles and also here? That is not possible. I rule it out of order.

Article 24

Shri T. T. Krishnamachari (Madras : General) : It is the desire of many Honourable Members of this House that this article should not be taken up now, but taken up later, because we are really considering various amendments to it so as to arrive at a compromise and Dr. Ambedkar will bear me out in regard to this fact.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Yes, Sir, I request that article No. 24 be kept back.

Mr. Vice-President : Is that the wish of the House?

Honourable Members : Yes.

Mr. Z. H. Lari (United Provinces : Muslim) : Then what about article 15, Sir?

Mr. Vice-President : The consideration of that article has been postponed for the time being.

(To Mr. Kamath) You want to say something about the amendment dealing with Military training in article 24?

Shri H. V. Kamath (C. P. & Berar: General): There are those amendments which do not relate to "Right to Property", and which have been given notice of as new article to be inserted after article 24. What about these?

Mr. Vice-President : They will be taken up after article 24.

Article 25

Kazi Syed Karimuddin (C. P. and Berar : Muslim) : Mr. Vice-President, Sir, article 25 lays down in clause 4 "The rights guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution." Now I move my amendment :

"That the consideration of article 25 be postponed till the consideration of Part XI of this Draft Constitution."

In article 280, it is laid down "Where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

If article 25 is passed today, then we are accepting the provisions of article 280 because clause (4) of article 25 says that "the rights guaranteed by this article shall not be suspended except otherwise provided for by this Constitution." We have very serious objections to the passing of article 280. The emergency Provisions contained in articles 275 to 280 are of an extraordinary nature and some of them militate against the fundamental principles of federalism and do not find any parallel in any world constitutions and there are several amendments to be moved to articles 275 to 280. So by acceptance of this article, we will be accepting the provisions of articles 275 to 280. Moreover, this article says "as otherwise provided for by this Constitution." This article cannot be considered at all unless the provisions in articles 275 to

280 are taken into consideration. Therefore, my submission is that before articles 275 to 280 are passed, we are incompetent to consider the provisions of article 25.

The Honourable Dr. B. R. Ambedkar : Sir, I do not think that because this article is subject to the provisions of the other articles to which my honourable Friend, Mr. Karimuddin has referred, it is not possible for us to consider this article now, because, as will be seen, supposing we do make certain changes in article 285 or others relating to that matter, we could easily make consequential changes in article 25. Therefore, it will not be a bar. Therefore, it is perfectly possible for us to consider article 25 at this stage without any prejudice to any consequential change being introduced therein. Supposing some changes were made in the articles that follow.....

Kazi Syed Karimuddin : Then why not postpone this?

The Honourable Dr. B. R. Ambedkar : No.

Mr. Vice-President : I am going to put this amendment to vote, because if it is carried, then the consideration of all the amendments will be postponed.

Mr. Vice-President : The question is:

"That the consideration of this clause be postponed till the consideration of Part XI of this Draft Constitution."

The motion was negatived.

Mr. Vice-President : Amendment No. 782 is disallowed. Amendment No. 783, standing in the name of Mr. Naziruddin Ahmad.

The Honourable Shri K. Santhanam (Madras : General) : On a point of order, Sir, this amendment suffers from vagueness. There is no particular meaning.

Mr. Vice-President : Let us hear what Mr. Naziruddin Ahmad has to say.

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move:

"That for clause (1) of article 25, the following clause be substituted, namely:

'(1) Every person shall have the right by appropriate proceedings to enforce the rights conferred by this Part.' "

Sir, it is suggested by Mr. Santhanam that the amendment is vague. I submit that it is not vague.

The Honourable Shri K. Santhanam: Appropriate proceedings,—judicial, administrative or executive?

Mr. Naziruddin Ahmad : Proceedings in a Court.

The Honourable Shri K. Santhanam: Where is the Court?

Shri M. Ananthasayanam Ayyangar (Madras : General) : Neither the procedure nor the forum is indicated in the amendment.

Mr. Naziruddin Ahmad : Perhaps there is some mis-print; I do not know. If there is no mis-print, it is certainly open to the comment that it is vague.

The only point that I had in mind was that the right to move the Supreme Court by appropriate proceedings is guaranteed. I wanted to allow the people to move other Courts also. If there is a fundamental right granted here, and if any poor man is forced to move the Supreme Court....

The Honourable Dr. B. R. Ambedkar : See sub-clause (3).

Mr. Naziruddin Ahmad : That sub-clause empowers some other specified Courts to deal with this subject; but I wanted to make it more general, that the fundamental rights should be capable of being enforced by a motion in any Court. In fact, all Courts should be open to the people. If there is a fundamental right which is violated, and if the man whose right is violated is a poor man, it would be wrong to drive him to the Supreme Court or some other Court duly empowered in this behalf, which will be some superior Court. I want to see that all Courts have the power to decide fundamental rights or breaches of fundamental rights and this should be given to all Courts civil or

[Mr. Naziruddin Ahmad]

criminal. If a difficult point of constitutional right is raised in any civil or criminal Court in a small case, then, that Court should be enabled to decide it immediately. Instead of that, this clause (1) would force the party to move the Supreme Court or some other selected Court duly empowered in this behalf.

I admit fully that the drafting of this amendment is certainly open to the comment that it is a little vague; but I am suggesting the principle. If the principle is acceptable, then, the amendment may be changed accordingly. This point is at the back of my mind; perhaps in a hurry, I made a mistake; it should be, "by appropriate proceedings *in any Court*". In fact, the actual wording of the amendment is not very important.

Mr. Vice-President : There is an amendment to this amendment. No. 43 standing in the name of Mr. V. S. Sarwate.

Shri V. S. Sarwate (United State of Gwalior-Indore-Malwa Madhya Bharat): Sir, I shall move the amendment after Dr. Ambedkar has moved his.

Mr. Vice-President : Yours is an amendment to amendment No. 783.

Shri V. S. Sarwate: And also, alternatively to amendment No. 794.

Mr. Vice-President : You want to move it when we come to amendment No. 794. Is that your wish?

Shri V. S. Sarwate : Yes, Sir.

(Amendment No. 784 was not moved.)

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in clause (1) of article 25, for the words 'Supreme Court', the words 'Supreme Court or any other Court empowered under clause (3) to exercise the powers of the Supreme Court' be substituted."

Sir, we have in clause (3) already attempted to provide the authority to Courts other than the Supreme Court to exercise those rights. This is consequential upon clause (3).

(Amendment No. 786 was not moved.)

Mr. Vice-President : Amendments Nos. 787, 788 and 793 are of similar import and will be considered together. Amendment No. 788 seems to be the most comprehensive.

(Amendment No. 788 was not moved.)

Mr. Vice-President : Then, we can take up amendment No. 787 standing in the name of Mr. Kamath.

Shri H. V. Kamath : Mr. Vice-President, I move amendment No. 787 of the List of amendments as amended by amendment No. 64 in List 4 (III week). I move:

"That for clause (2) of article 25, the following be substituted:

'(2) The Supreme Court shall have power to issue such directions or orders or writs as it may consider necessary or appropriate for the enforcement of any of the rights conferred by this part.' "

At the outset let me make it clear that I am a mere layman and not a professional lawyer or a legal or constitutional expert like my Friend Dr. Ambedkar; but I know a bit of law though not very much of it, and I will have my say on the basis of the little knowledge of law which I possess. This clause of article 25 relates to the power of the Supreme Court to issue orders for the enforcement of any of the Fundamental Rights mentioned in part III. I think that so far as the Supreme Court is concerned, it is not necessary to lay down what particular writ it should issue. After all, Sir, it may be that with the growth of legal and constitutional precedents, other writs than these mentioned here in this article may be evolved, and whenever a particular case comes up before the Supreme Court, it may be that the Court will take all the aspects of the case into consideration and issue such a writ—might be one of these, or a new writ may be evolved. I think this particular clause

of the article is a very regrettable instance to my mind of what is called in legislation—'Legislation by reference'. When we are dealing with the Supreme Court consisting of eminent judges and jurists, it is not wise for us nor desirable to lay down what particular writs the Supreme Court should issue in a particular case. Therefore, all things considered, I feel that so far as the Constitution is concerned, we should just say this much that the Supreme Court should issue such orders or directions or writs as the Court may consider necessary or appropriate in any particular case. I therefore move, Sir, that for clause (2) of this article the following be substituted:

"The Supreme Court shall have power to issue such directions or orders or writs as it may consider necessary or appropriate for the enforcement of any of the rights conferred by this part."

I hope that Dr. Ambedkar will tell us why he thinks it necessary to specify the particular writs here and not just leave it to the Supreme Court to decide what particular writs or orders or directions it should issue in any particular case. I hope he will not merely stand on prestige or some such consideration but will give satisfactory and valid reasons why we should insist on mentioning these particular writs in this clause of the article.

(Amendment No. 788 was not moved.)

Mr. Vice-President : Nos. 789 and 790 are similar and I allow 790 to be moved.

(Amendment Nos. 789 and 790 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I understand that Mr. M. A. Baig is not in the House. Will you permit me to move 789. I am going to accept this amendment. It shall have to be moved formally.

Mr. Naziruddin Ahmad : I desire to move it if that is acceptable to the House.

Mr. Vice-President : Does the House permit Mr. Naziruddin Ahmad to move this?

Honourable Members : Yes.

Mr. Naziruddin Ahmad : Sir, I move:

"That in clause (2) of article 25, for the words 'in the nature of the writs of' the words 'or writs, including writs in the nature of' be substituted."

Sir, this is a red letter day in my life in this House, that this is a single amendment which is going to be accepted. This amendment is a foster-child of mine and that is why perhaps the honourable Member is going to accept it. It requires no explanation.

Shri H. V. Kamath : On a point of order. Is my Friend right in saying it is going to be accepted when it is only moved.

Mr. Naziruddin Ahmad : I heard a rumour that it is going to be accepted.

Mr. Vice-President : Nos. 791 and 792 are disallowed as verbal amendments.

(Amendment No. 793 was not moved.)

Mr. Vice-President : Nos. 794, 795 and 799 are similar and are to be considered together. 794 is allowed to be moved.

The Honourable Dr. B. R. Ambedkar : With your permission I will just make one or two corrections to some words which crept into the drafting by mistake. Sir, with those corrections, my amendment will read as follows:

"That for the existing sub-clause (3) of article 25, the following clause be substituted:

'Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) of this article, Parliament may by law empower any other Court to exercise within the local limits of its jurisdiction all or any of the powers excercisable by the Supreme Court under clause (2) of this article.' "

The reason for inserting these clauses (1) and (2) is because clauses (1) and (2) refer to the Supreme Court.

Mr. Vice-President : There are two amendments to this amendment. One is No. 44 and the other is 45 of List I (III week) and Mr. Sarwate's amendment No. 43. Mr. Sarwate.

Shri V. S. Sarwate : Sir, the amendment which I move stands thus:

"That at the end of amendment No. 794 of the list of amendment, the following be added:

'*Explanation.*—The Supreme Court, in deciding matters arising out of this article, shall have the power to go into questions of fact.' "

Sir, the scheme which we have adopted in this Chapter regarding Fundamental Rights consists, first, that the rights themselves are enumerated in broad terms and then by clauses which follow, the Legislature has been given power to put restrictions on the rights in certain matters specified in those clauses. Lest the legislature should exceed its powers, or makes legislation in excess of the requirements of the case, a safeguard is provided by the present article. Now, it is possible to argue that the court can only see whether the legislature has passed an Act in respect of that matter, without going into the details, or it may be argued that the court has no power to go into the details, and to determine the issues whether a particular case required or necessitated or justified the passing of that particular legislation. It is necessary to provide for such a contingency, because by article 13, the legislature has been given power to make 'any law'. The terms are wider than if it had been expressed in the way that the legislature has power to penalise such and such matters. The expression used is 'any law' which is wider than if it had been only power to penalise. Therefore it is necessary in each case for the court to see whether the particular legislation meets exactly the requirements of the case, whether it does not exceed the requirements of the case. Getting panicky a legislature may pass a legislation where it may not be necessary to have any such legislation. Therefore I have added this explanation. The very wording of the explanation shows that it does not add anything to or substract anything from the original clause, but it only explains something. It may be argued that this is may be a certain doubt expressed in this respect, and so to remove and to avoid such doubts being raised, and to make it more specific and more outside the pale of any doubt, I have tried to add this explanation. I commend it to the House and to the Mover, for acceptance.

Mr. Vice-President : Then amendment No. 44 and amendment No. 45 in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I do not want to move No. 45 because it is open to some objection. I shall move only No. 44.

Sir, I beg to move:

"That in amendment No. 794 of the list of Amendments, in the proposed clause (3) of article 25, the words 'without prejudice to the powers conferred on the Supreme Court by clause (2) of this article' be deleted."

Sir, the original article tries to confer powers on *any other Courts*, powers which may be exercised by the Supreme Court, under clause (1). As we have already stated in this clause, Parliament may by law empower any other Court. The words "any other court" indicates that this is a supplementary power to be given to other courts, without any prejudice to the powers of the Supreme Court. The powers of the Supreme Court are defined very precisely as absolutely supreme over all other Courts. So the words "without prejudice to the powers of the Supreme Court" would be unnecessary. In fact, there is no possibility of any doubt that the Supreme Court has over-riding powers. In these circumstances, the words seem to me to be unnecessary. Therefore, they should be deleted. In fact, the powers of the Supreme Court are very specific in this respect. The very name—Supreme Court—indicates that it is supreme in all matters. If we keep the words, we would suggest that the rights of the Supreme Court are not supreme, it really indicates some doubt

that the Supreme Court is not perhaps supreme in legal matters. That is the reason for asking for the deletion of these words.

(Amendment Nos. 795 and 799 were not moved.)

Mr. Vice-President : Amendment No. 796 is disallowed on the ground that it is only a formal amendment.

(Amendment Nos. 797, 798, 800 were not moved.)

Amendment No. 801 standing in the joint names of Shri Kamath and Mr. Tajamul Husain.

Shri H. V. Kamath : I shall make way for Mr. Tajamul Husain.

Mr. Tajamul Husain (Bihar : Muslim): Mr. Vice-President, Sir, I beg to move:

"That clause (4) of article 25 be deleted."

Sir, under article 9, the State shall not discriminate against any citizen on the grounds of religion, caste, etc. That means that a citizen is allowed to enter any shop, restaurant, hotel etc. He is allowed to use wells, tanks, roads and other things. Under article 13, the citizen is allowed to practise his profession, and carry on his trade in any way he likes. Under article 25, a citizen can move the Supreme Court for the enforcement of his rights mentioned above, and the Supreme Court can issue order in the nature of *Habeas Corpus* or *Mandamus* etc. But Sir, clause (4). of article 25 speaks of the suspension of the rights of citizens which I have just now mentioned. Article 280 says that where a proclamation of emergency is in operation the President can suspend the fundamental rights guaranteed to the citizens. This, I submit, should not be allowed. If such a right is allowed to the President, under the Constitution, then the right of equality as mentioned in article 9 will cease to exist for the time being. And citizens will not be allowed to use wells, tanks, roads, etc. Freedom of speech will have to be suspended; right to practise one's profession will also go; protection of life as guaranteed under article 15 will go; freedom of conscience will go; the right to move the Supreme Court will go. I think it is very dangerous to give all these powers to the President. After all what are we? We are only the representatives of the people—we are the people. When we have framed the Constitution we will dissolve ourselves and another set of people will come. They will also be the representatives of the people. They will be the same as ourselves—there can be no difference between us. Have we got the right to bind down those people? Can we say to them 'Thou shalt not do this; thou shalt do this'? It is a free country. If the people want to have revolution, let them have revolution. What right have we to prevent that? Therefore I say that no power should be given to any person, however big—to the President of the Republic or to anybody else—to suspend any Fundamental Rights guaranteed under this Constitution. With these words I commend my amendment to the House.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, I move:

"That in clause (4) of article 25, for the words "as otherwise provided for by this Constitution" the words "in case of rebellion or invasion and when State of Emergency is proclaimed under Part XI of this Constitution" be substituted."

Sir, I cannot agree to the amendment moved by Mr. Tajamul Husain saying that the whole of clause (4) should be deleted. There are occasions in the country when actually there is an invasion and rebellion inside and no President will be so foolish as to restrict activities which have no concern with the invasion or rebellion like discrimination between man and man and even untouchability. Therefore in order to maintain peace and tran- quility in the country, it would be necessary to suspend some of the provisions under articles 13 and 25, but to say that every clause and sub-clause under articles 13 and 25 will be suspended as soon as there is invasion or war is, I think unimaginable. My amendment lays down that the rights guaranteed by this article shall

[Kazi Syed Karimuddin]

be suspended only when there is invasion because the provisions in articles 275 to 280 lay down that even if there is an immediate danger of war articles 13 and 25 will be suspended not only for the period of the emergency but six months even beyond that period of emergency. It has been laid down under article 280 that 'where a Proclamation of Emergency is in operation, the President may by order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not exceeding beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order.' I was pleading very earnestly that the provisions of article 25 should be passed over and considered after the passing of the provisions under articles 275 to 280. Now we are taking into our hands the question of suspending the provisions of articles 13 and 25 when we do not know the picture that would emerge under the provisions of articles 275 to 280. Now the rights are to be suspended in consideration of provisions that are yet to be made and which have not been accepted by the House. I thought that Dr. Ambedkar would oppose this proposal. But I bow to the decision of the House. Now the position before us is that we are going to accept clause (4), if at all it is accepted, for considerations and provisions which are not yet passed, and the House may reject them. In reply to that it has been stated that necessary changes will be made. Well, I have made the necessary change and it is before the House to accept or reject. And it is this, namely, that in case of rebellion or invasion and when a State of Emergency is proclaimed under Part XI of the Constitution—that is, articles 275 to 280—these rights can be suspended. My submission is that unless there is a declaration of a State of Emergency and unless there is actual invasion or rebellion inside, the rights granted under articles 13 and 25 should not be suspended. For example, suppose a party in a province which is hostile to the party in power at the Centre comes into power in the province. And suppose there is a quarrel between the Provincial Government and the Central Government and the party disobeys some of the orders issued from the Centre. Immediately the President, thinking that there is domestic violence inside the province, can suspend that part of the Constitution according to the emergency law. The result would be that every right of the individual citizen under article 13 will be suspended. Therefore, the two conditions which I have laid down in my amendment are that in cases of invasion and rebellion these rights should be suspended. I do not say that these rights should never be suspended, although in England and America there is no such provision for suspending such rights. But our country is passing through a transition and through a crisis; and if these rights are not suspended during such times there will be great turmoil in the country. I therefore plead that the amendment which I have moved should be accepted.

Mr. Vice-President : Amendment No. 803 is a verbal amendment and is disallowed.

(Amendment No. 804 was not moved.)

Mr. Naziruddin Ahmad : I shall move amendment No. 805.

Shri M. Ananthasayanam Ayyangar : It is also a verbal amendment.

Mr. Naziruddin Ahmad : Sir, I move:

"That in clause (4) of article 25, for the word 'guaranteed', the word 'conferred' be substituted."

As Mr. Ananthasayanam Ayyangar has suggested that it is a verbal amendment, I shall at once explain the reason why I have moved it. I confess that it is very nearly a verbal amendment. But the only reason why I have moved it is because I have the authority of amendment No. 811 to the same effect standing in the name of Dr. Ambedkar himself. In fact he has tried to change the word "guaranteed" by the word "conferred". My amendment is exactly the same as amendment No. 811. If No. 811 is acceptable

to the House, No. 805 should also be equally acceptable. May I submit that amendment No. 791 standing in my name is not a mere verbal amendment? It changes the sense altogether, and may I be permitted to move it in a one minute speech?

Mr. Vice-President : No.

Mr. Naziruddin Ahmad : It changes the meaning. I ask you to consider it. I will be willing to bow to your considered decision.

Mr. Vice-President : In that case you will not move it.

(Amendment No. 806 was not moved.)

As amendment No. 806 has not been moved, an amendment to it by Pandit Bhargava (No. 46 in the list) falls through.

(Amendment No. 807 was not moved.)

The article is now open for general discussion.

Shrimati G. Durgabai (Madras : General): Mr. Vice-President, Sir, I have great pleasure in supporting this article. While doing so, I wish to place a few points before the House for its consideration.

Sir, the right to move the Supreme Court by appropriate proceedings for the enforcement of a person's rights is a very very valuable right that is guaranteed under this Constitution. In my view this is a right which is fundamental to all the fundamental rights guaranteed under this Constitution. The main principle of this article is to secure an effective remedy to the fundamental rights guaranteed under this Constitution. As we are all aware, a right without an expeditious and effective remedy serves no purpose at all, nor is it worth the paper on which it is written. Therefore, as I have already stated, this article secures that kind of advantage that it will ensure the effective enforcement of the fundamental rights guaranteed to a person.

Sir, then, all of us are aware, and the Drafting Committee is quite alive to the fact, that in recent times in England the procedure under ancient writs has been considerably modified and a simple remedy by a petition has been substituted for writs in a recent enactment in England. Perhaps that is the reason why the Drafting Committee has put in this article directions or orders in the nature of writs of *habeas corpus* etc.

Another point is that the right that is vested in the Supreme Court in no way affects the right of the High Courts in any part of India to issue similar writs or to enable Parliament to make laws empowering any other Courts to exercise the same power within the local limits of its jurisdiction. The question might arise in this connection as to what happens if the High Court refuses to issue a writ, and whether in the absence of a specific provision to that effect, an application for the issue of a writ is barred to the Supreme Court. To that my answer is, "No", because I consider that in these matters there is no question of *res judicata*. A person can move any number of courts and before any judge an application for the issue of this writ, though the Supreme Court naturally takes into consideration the order passed either by the High Court or any other Court in granting or refusing to issue this writ. Therefore, the application is not barred.

There are some other points also to be mentioned in this connection, but I feel these are the two main questions that might arise in this connection. One is whether the right that is vested in the Supreme Court bars the right of the other High Courts to issue similar writs; that question, I think, I have answered. The other question is whether in the case of concurrent jurisdiction, that is if the High Court refuses to issue this writ, whether an application is barred to the Supreme Court. That also I have answered by stating that any number of times a person can go to any number of Courts and move this application.

[Shrimati G. Durgabai]

Sir, with these few words I have great pleasure in supporting this article. I commend it to acceptance of the House.

Rev. Jerome D'Souza (Madras : General): Mr. Vice-President, I too should like to join my distinguished colleague, Shrimati Durgabai, in expressing gratification at the passing of this very important article which may justly be considered to be of the gravest character, and of the most far-reaching importance. I am sure, Sir, that Members of this House will recall to their minds that today is exactly the second anniversary of the opening of this great Assembly, and surely it is not without some significance that, nearing the end of our discussion on the Fundamental rights, this coping-stone of the structure of those rights should be placed today.

I should like to draw the attention of the House, Sir, to the implications of this article, implications which possibly are not obvious at the first reading. This House, and through this House the Legislatures that have to rule this country in future, by a laudable and significant act of self-denial or self-abnegation, places under the power of a Supreme Judicature the enforcement of certain laws and certain principles, and remove them from the purview and the control of the Parliaments which will be elected in future years. They wish to put these rights beyond the possibility of attack or change which may be brought about by the passions and vicissitudes of party politics, by placing them under the jurisdiction of judges appointed in the manner provided for later on in this Constitution. Sir, it is because we all believe,—and that is the implication of this chapter of fundamental Rights,—that man has certain rights that are inalienable, that cannot be questioned by any humanly constituted legislative authority, that these Fundamental Rights are framed in this manner and a sanction and a protection given to them by this provision for appeal to the Supreme Court.

As I said, Sir, the implication of this is that an individual must be protected even against the collective action of people who may not fully appreciate his needs, his rights, his claims. And the sacredness of the individual personality, the claims of his conscience, are, I venture to say, based upon a philosophy, an outlook on life which are essentially spiritual. Sir, if all our people and their outlook were entirely materialistic, if right and wrong were to be judged by a majority vote, then there is no significance in fundamental rights and the placing of them under the protection of the High Court. It is because we believe that the fullest and the most integral definition of democracy includes and is based upon this sacredness of the individual, of his personality and the claims of his conscience, that we have framed these rights.

I say, Sir, further that in the last analysis we have to make an appeal to a moral law and through the moral law to a Supreme Being, if the highest and the fullest authority is to be given and the most stable sanction to be secured for these fundamental rights. Sir, Mahatma Gandhi, in one of his unforgettable phrases, referring to the desire to have a secular Constitution and to avoid the name of the Supreme Being in it, cried out, "You may keep out the Name, but you will not keep out the Thing from that Constitution". And, Sir, I believe that these fundamental rights and their implications are really tant amount to a confession that beyond human agencies and human legislatures there is a Power which has to be submitted to, and there are rights which have to be respected.

Sir, we have introduced in these Fundamental Rights certain provisions—necessary perhaps in present conditions—that in Government institutions instruction in different religions may not be given, in order that the calm atmosphere of our institutions may not be disturbed by controversies. But I hope and pray that those provisos, prudent though they are, may not exclude the teaching of ethical principles based upon truths acceptable to all, upon the existence

of a Supreme Being and the rights of the individual conscience formed under His guidance. I am sure that religious controversies could be avoided on the basis of those universally accepted truths. It is certain that our national culture and civilization are based upon and permeated by this belief and this conviction; otherwise there would be no meaning in these fundamental rights. A speaker who preceded me asked: "Why is it that provision has been made to change this Constitution? Why should not these sacred rights be placed beyond the possibility of abrogation?" I would answer him: "If the convictions and the faith of our people go away, there is no use in trying to protect these rights by sanctions. The rights and the sanctions would be illusory. But if faith remains, no one will want to touch them."

By this article we give to our Supreme Judicature a power, a status and a dignity which will call from them the highest qualities of integrity and uprightness. The full meaning of this article should be borne in mind when we come to that Part of the Constitution beginning with article 103, when we shall have to scrutinise the steps by which an upright and absolutely fair judiciary will be established in this land. When we consider that Part, let us recall these Rights and make sure that all these various provisions will be enforced in a just and fearless manner.

I now pass on to the next consideration and I beg the indulgence of the House to permit me to say a few words about the manner in which the Minority rights and Fundamental Rights are in extricably mingled together in this Part of the Constitution. Sir, I believe this is a right and necessary mingling. After all, what the minorities ask is that the right of the individual may be safeguarded in an inescapable manner. If that is done, "minority rights" as such would not and need not exist. It is because in a democratic system of Government where a majority vote may do injustice to a minority, that certain specific references to the minorities have to be made. But ultimately, in the last analysis, if the individual's right to his religious convictions, to his cultural preferences, to the rights which accrue to him as a man endowed with free will and reason and charged with the obligation of personal salvation, if these are safeguarded, "minority rights" as such need not find expression. That is why, mingled with these general rights, references are made to minorities. I should like to say on behalf of my own community which I have the honour to represent here—I am sure I am also voicing the feelings of many others—that if these rights are really safeguarded in the manner in which they are sought to be safeguarded in this Constitution, if the Fundamental Rights including as they do minority rights, are assured in an absolutely indubitable manner, no kind of political safeguards will be necessary for us and we shall not demand them, as long as, I say, this part of the Constitution is enforced without any kind of "encroachment" or misinterpretation.

Sir, the desire of our country and of our leaders is to work for the political homogeneity of this vast country. Unfortunately that political homogeneity was threatened, and to some extent destroyed by the need to give political safeguards to minorities. But remember those safeguards were asked for or were deemed necessary for the sake of religious and cultural and individual rights and not merely for the sake of political privileges or any emoluments which might come from them. And, as long as these, cultural and personal rights are safeguarded, we do not need any other political safeguard. Therefore, Sir, I hope and beg that we may ever remember that in the measure that these fundamental rights, protected in the last analysis by the Supreme Court, are enforced and carried out integrally and honourably, to the last implications of them, the desire for political safeguards and to that degree of political separatism and partial autonomy which it implies will not arise in this country. We will do nothing to raise that slogan once again. As far as the small Christian community is uncerned

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we have gone a great way in giving up those political safeguards and we are prepared to go further and give up the reservations which have been made in certain provinces. And if we do so, it is because we know that in the spirit in which these fundamental rights have been guaranteed, there is for us an assurance of safety and a confidence which does not need to be propped up or further affirmed by political safeguards and privileges.

There are, I know, Sir, certain other safeguards still maintained in this Constitution, such as economic safeguards for backward communities and so forth. I believe that a transitory measure of this kind is necessary; it is wise and prudent to reassure many sections of our people in this way. But, Sir, I submit that the full and logical implications of what we are doing now is that a time should come when even the economic and other assistance to be given should not be based upon the claims of classes as a whole, but should be based upon the claims of the individual. I am sure, Sir, a time will come when all those who claim and need special assistance, will get it, without reservations and safeguards on the basis of communities; when our legislatures and the leaders of the country will be able to think out individual tests, in which the communal or social background may certainly be taken into account, but which will give that assistance or that concession to all individuals, without limiting it to particular castes or classes. It is only on this ground and on this understanding that class differences, in so far as they are dangerous politically and lead to political separatism, will be eliminated. If, on the other hand, cultural, religious and other rights of this nature are safeguarded, I do not see why the variety and the diversity of this country should not be a source of strength and glory rather than a source of political weakness such as they threatened to be in recent years. We earnestly trust that the spirit in which these rights will be enucleated, interpreted and enforced in future years by our Judges, the spirit in which the majority community will give effect to them, will allay all fears and encourage the minorities in the path which they have deliberately chosen now, of giving up political safeguards. Thus alone in the near future—I do not wait for a distant future—in the near future, will the political homogeneity of these three hundred and thirty million people be an accomplished fact, and the members of all communities standing shoulder to shoulder in their civic equality, but maintaining their right to their own faith, their convictions and their ideals, and drawing their individual strength from those beliefs and from those convictions will work together for the prosperity and greatness of our motherland. *(Applause)*.

Shri M. Ananthasayanam Ayyangar : Mr. Vice-President, Sir, the Supreme Court according to me is the Supreme guardian of the citizen's rights in any democracy. I would even go further and say that it is the soul of democracy. The executive which comes into being for the time being is apt to abuse its powers, and therefore the Supreme Court must be there, strong and un-trammelled by the day to day passions which may bring a set of people into power and throw them out also in a very short time. In less than three or four years during which a parliament is in being, many governments may come and go, and if the fundamental rights of the individual are left to the tender mercies of the Government of the day, they cannot be called fundamental rights at all. On the other hand, the judges appointed to the Supreme Court can be depended upon to be the guardians of the rights and privileges of the citizens, the majority and the minority alike. So far as the fundamental rights are concerned, my humble view is that there is no difference between the rights and privileges of individual citizens, whether they belong to the majority community or to the minority community. Both must be allowed to exercise freedom of religion, freedom of conscience, must be allowed to exercise their language and use the script which naturally belongs to them. These and other rights must be carefully watched and for this purpose the Supreme Court has been vested with the supreme ultimate jurisdiction.

So far as the rights of the minorities are concerned, some other provision has also been made in this Constitution in article 299, under which a special officer or officers are to be appointed to watch their interests and to report to the President of the Union, as also to the Governor, on how far the minority rights that have been enumerated in this and the other parts of the Constitution are being observed, and it is the duty of the President or the Governor to lay this report before the legislature. But this in itself will not do unless the Supreme Court is watchful and is allowed to pull up any executive government if it goes astray.

Sir, I agree with my predecessors who have spoken that this is the most important article in the whole constitution as it is the guardian of the people's rights. So far as I know, in recent years some provincial legislatures have passed laws abrogating the writ of *habeas corpus*. Such latitude with people's rights ought not to be allowed in any event.

Then as regards clause (4), my friend suggested that this clause ought to be removed. I do not agree with him, though I agree that the wording here is a little broad and is likely to be abused. I am sure that that amount of latitude ought to be given to the government of the day. If any emergency is proclaimed, I am sure that the rights guaranteed by this article will be suspended only for the period of the emergency but not for another six months after the emergency is over, though it is open to the President to allow the same state of affairs to continue for a period of six months after the emergency is over. It is equally open to the President to say that this clause will be abrogated only during the period of the emergency and not for a further period of six months after the expiry of the emergency.

Shri H. V. Kamath : On a point of clarification, Sir, may I invite my friend's attention to clause (4) of this article as well as article 280 and request him to read them together. Article 280 says that:

> "The President may be order declare that the rights guaranteed by article 25 of this Constitution shall remain suspended for such period not extending beyond a period of six months after the proclamation has ceased to be in operation as may be specified in such order."

Is not clause (4) liable to be misconstrued, when it is read with article 280? Does article 280 cover all the fundamental rights? Does it mean, Sir, that even such rights as rights of anti-untouchability, religious and cultural rights will also be suspended?

The Honourable Dr. B. R. Ambedkar : I will deal with this.

Shri M. Ananthasayanam Ayyangar : Article 280 does not mean that the President will have to suspend these rights. He is not bound to suspend them or suspend all of them. It is not obligatory on the President to suspend the rights enumerated in this part. Therefore article 280 need not create any apprehension. Moreover, the person who is clothed with this power is the President of the Union, who ranks along with the Supreme Court judges. The President is not incharge of the administration. It is his ministers who are incharge of the administration. He only intervenes when necessary. Under these circumstances I am sure that the rights that have been enumerated in this part are safe in the hands of the Supreme Court and also in the hands of the President. Therefore, so far as the amendments that have been tabled by my friend Mr. Naziruddin Ahmad are concerned, I do not agree with him. Nor is it necessary to include under clause (1) other courts also. Provision has been made in sub-clause (3) for clothing other courts with powers similar to the powers that have been conferred upon the Supreme Court. Clause (4) guarantees not only the rights that have been guaranteed in clause (1) but also those guaranteed in clause (3). My friend, Mr. Naziruddin Ahmad, wants to incorporate what is contained in clause (4) in clause (1). The wording as it stands seems to be enough, and his amendment is not necessary. It is also not definite. It is rather clumsy. Under these circumstances, I am

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opposing the amendments moved by Mr. Naziruddin Ahmad and also the amendment relating to the deletion of clause (4). The article as it stands may be accepted.

B. Pocker Sahib Bahadur (Madras : Muslim): Mr. Vice-President, Sir, I wish to speak a few words on this article. As was observed by Mr. Ananthasayanam Ayyangar, I would say that this is the most important article of the whole Constitution and we have to take care to see that the rights conferred by this article are not watered down or in any way modified by other articles or even by the other clauses of this very article. Now, Sir, recent experience after we gained independence has taught us that we have to be much more careful in safeguarding the individual liberties and the rights of the citizens now than when we were ruled by the foreigners. I must say that the recent behaviour of certain provincial governments has taught us that it is very necessary to take careful measures to see that they are not allowed to behave in the manner they have behaved. I am referring to the way in which the sacred rights and liberties of the person were being dealt with by certain provincial governments under the cloak of the powers that they are said to possess. Very often, Sir, it has become the fashion with these Provincial Governments to say: "Well, some state of emergency has arisen and therefore, in the public interest, we shall utilise the powers conferred by the Public Safety Act and we shall have to curtail the liberties of so many people and put them in jail". And this is done without those people knowing on what grounds they are arrested, what is the sin that they have committed against the State or against the peace of the country, in order to deserve the curtailment of their liberty in this irresponsible fashion; and they are kept in that state of mind for weeks and months, without even being told what the ground is on which they are arrested and detained, even though the Government is bound to furnish them with the reasons for their arrest and detention, under the provisions of the Act under which the Government proposed to arrest them.

Now, Sir, if we look at the irresponsible way in which things were done very recently, it is very necessary that we must have very strong safeguards against the misuse and abuse of the powers which may be conferred on these Governments. I would say, Sir, that one principle which we have to bear in mind and we should always keep in view in framing this Constitution is that ministries may come and ministries may go, but the judicial administration must go on unaffected by the vicissitudes in the lives of these ministries and the changes in the Government. It is more to preserve their own power, I mean, the power of the particular party or the clique in power that these measures are resorted to than for any public purpose. Such a state of affairs should never be allowed to be tolerated. I shall refer to one instance, Sir.

In Madras the legislature was in session and all of a sudden, one evening, a notification was issued that the legislature was prorogued. For what reason it was done, nobody knew, and the next morning an ordinance was issued. To what effect? Apart from so many other things, there was the Public Safety Act and under that Act many people were arrested and detained in jail, without even being told what they are arrested for and why they are detained. Well, they were forced to resort to such remedies as were available under the existing law and applications were pending in the High Court for issue of writs of *Habeas Corpus* and the High Court issued in deserving cases writs of *Habeas Corpus*. The moment a person was released by the order of the High Court, that very moment he was re-arrested and put in jail again. And not satisfied with all these apparently, the Government felt annoyed by the independent way in which the High Court was exercising the legal powers conferred on it under Section 491 of the Criminal Procedure Code. What happened was that one evening the Legislature was prorogued and the next morning an ordinance was issued, even taking away the power of the High

Court to issue writs under section 491 of the Criminal Procedure Code. Now, Sir, is there any *bona fides* in this? Can any reasonable man say that this could be done with any *bona fides*? This is the most scandalous way in which the powers conferred on the Government were being exercised. Under the cover of the powers conferred on them, they have acted in the most irresponsible way. Therefore, it is that I say, Sir, that the powers of courts should not be made to depend upon the will and pleasure of the Government and they should under no circumstances be allowed to interfere with the powers that vest in courts of law. If the very guarantee of personal liberty on which democratic form of Government is based and the powers vested in courts of law to enforce such rights independently are allowed to be interfered with, no one is safe. Of course, it is not a question of majority community; it is not a question of minority community but the powers that be at the time clap in jail such of the individuals or groups of people, whom they do not like and whom they do not want to be at liberty, perhaps for the fear that they may undermine the power which they are enjoying. It is one thing to make safeguards on occasions when there is general disturbance of the peace of the country, but it is quite another thing to give full powers to the Governments to do anything they like under the guise of these 'emergency powers' and empower them to take away powers vested in Courts of Law to protect the personal liberty of citizens.

Now, Sir, I would only like to point out this, that this is certainly one of the very important rights which has been conferred under this Constitution, but I am afraid, Sir, that clause (4) takes away with one hand what is given by the other, and therefore, I would heartily support the amendment that has been moved for the deletion of this clause. There is no necessity for that clause at all. Of course, as regards the powers to be exercised in case of emergency, there is provision under section 280 and even that would require modification and we shall have to deal with it when we reach that article, but by the provisions of this clause whatever powers are given by the previous clauses are interfered with and I would strongly support the amendment for the deletion of this clause. There is no necessity for it and as has been already pointed out by one of the honourable Members this will lead to a conflict with article 280 and there will be complications arising out of it. With these few words, I support the amendment for the deletion of this clause.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, now we have come to this last part of this Chapter and this article 25 gives the right to every citizen in the country to see that all the liberties guaranteed in this chapter are made available to him. He can go to the Supreme Court and demand that these laws be enforced. Sir, this is the crowning section of the whole chapter. Without it, all the articles which we have passed will have no meaning. As my honourable Friend, Mr. Ayyangar, has said, this is the most important section in the Constitution. This is, in fact, what makes all the fundamental rights become real. Everybody can have his remedies if any wrong is done to him, under this article.

I think, Sir, the article as it has been worded is very proper, and the demand for the deletion of clause (4) is not a proper one, at the present stage of our national development; though as a matter of principle, it may be said to be correct. In America and England there are no provisions under which the fundamental rights can be suspended. In fact, in England we have no such rights; they are unwritten rights. Still, in the present stage of our development, when the State is in fact being built up. I think this provision for the suspension of the rights in an emergency, as provided in the Constitution, is necessary. There will be an occasion for us to examine those articles under which these articles can be suspended and we will see whether those provisions are reasonable. But to say that even in an emergency, in a rebellion or on other such occasions, there should be no power to the State to suspend

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this Part of the Constitution, will, I think, be going too far, especially at this time of our national development. I think very soon when our State becomes stable, we shall be able to drop clause (4).

Clause (3) empowers the Parliament to make laws to empower the local courts to decide this question. I think this is also taking away to some extent the rights conferred here. Sir, the Supreme Court is the final authority. I have in fact a very high respect for the Supreme Court. I want that the Supreme Court should be a sort of a body almost independent of the Parliament. It should not be interfered with by the Parliament as in America. I therefore, think that this clause (3) which says that the Parliament will have power to make laws empowering any other court to decide this thing should not have been here. If Parliament does not want that the full import of the rights should be granted, they may empower any court to deal with this subject. I hope that in the first ten or fifteen years during which we experiment with this Constitution, we shall realise whether any Parliament is so determined as to make these rights null and void.

Sir, clause (2) gives the famous rights which are given all over the world, writs of *habeas corpus* and others. I think everybody will agree that this is very important and very good. Therefore, I think the article as it is, can be accepted, though, I think in later years if clause (3) is against the fundamental principles, it may be dropped. When our State becomes stable, clause (4) may also be dropped. That I think would be the proper form of this article after some time, when our democracy has become stable.

Sir, when we consider this article as the operative part of this chapter, we may review what we have done. In fact, this is a Chapter on Fundamental Rights. We have guaranteed against discrimination of all sorts; we have guaranteed that untouchability shall be abolished, which will be the most historic act done by the Assembly so far; we have granted the Charter of Liberty in article 13. I hope we will also pass article 15 wherein personal liberty and equality before law shall be guaranteed. Then, we have provided safeguards to minorities, both religious and cultural. The right to property has yet to be finally adopted. I think all these rights are the most important rights, the most valued rights of any citizen. I also want to say to my friends who yesterday thought that they were not sufficient to guarantee the rights of minorities, that the ultimate right of the minority is the good will of the majority. I personally feel that the majority has gone to the farthest extent in this matter. I may also point out one thing. The Fundamental Rights Committee was appointed before the partition took place. In fact, these rights were written in this form before the partition had taken place. The minorities' rights were laid down on the basis that there will be no partition. Yet, we have not changed them. I am not letting out a secret when I say that our great leader Sardar Patel told us, "kindly do not interfere with these rights, religious and cultural, because they form part of an agreement arrived at before the partition." If anybody says that these rights are not enough, I think it is the height of ungratefulness. I think we have guaranteed rights which our people will, probably, tell us in the future that we bartered away these rights. We have now declared that no religious education shall be given in the schools. Thirty crores of our people are Hindus; yet they shall not have the right to be taught even the universal religious book, the Gita, in the schools. Why have we done that? Because, at that time, before the partition, it was thought that in view of the fact that there are various religions, let it not be done. Now, when only three crores out of thirty-three are the minority, still, the majority is denying itself the opportunity of teaching the children the religious precepts of its community. Yet, we have not changed these rights, because our leader has told us not to interfere with them. I think the way in which the majority has tried to accommodate the minority will be taken note of and it shall not be right for anybody to come forward and loudly

accuse the majority that it has not provided sufficient safeguards. I think the real guarantee of the minority is the good will of the majority. I hope that with these fundamental rights, we will be able to produce in this country a State which shall be a State based and inspired by the ideals of the great leader, the father of the Nation, so that we can have in our country a really secular State; a State based on the ideals of Mahatma Gandhi.

With these words, Sir, I support this article.

Prof. N. G. Ranga (Madras : General): Mr. Vice-President, Sir, I am unable to understand the line of argument advanced by those friends who want clause (4) to be deleted, and who do not want to vest in the President of the Republic the power to suspend these fundamental rights under article 280 in case of emergencies. Sir, it has been said by more than one speaker that this article is the greatest guarantee for individual liberty in our country and that the Supreme Court is being set up as the biggest champion of the liberties of our people. But, has it been considered by these friends that just as individuals and groups have their rights, the society as a whole has certain rights *vis-a-vis* individuals and groups which are bent upon destroying that society, subverting the social order and dissecting the social organisation through violent means? Is it not a fact, Sir, that in the recent decades of this century there have been such attempts made by organized groups and minorities in different countries to subvert the social order and destroy the social life of the majority of the people themselves? What is the guarantee then for the continuance of the social order and social rights of the majority of the peoples in the different countries if an organized violent effort is made by a tiny minority? No effort has been made in this Constitution and in this Chapter to safeguard such a society. It may be said that there is a safeguard for the State; but is it not a fact that in Germany and Italy, a group of people organized for violence were able to get at the State and then subvert the whole of the society and destroy the fundamental rights of the majority of the people themselves? Is it not also a fact that in Soviet Russia even today an organized minority is in the saddle and is incharge of the State and is able to deny the fundamental rights not only to the whole of the majority of the people there, but also the fundamental rights of these individuals, as are being detailed here? Therefore, Sir, it is as well for us all to keep in mind this extreme need that society as a whole should safeguard itself against the possibility of organized minorities based upon violence, intent upon the use of violence, trying to use that violence. My Friend Mr. Pocker has tried to create a sort of bogey out of what had happened in Madras. Similar things could easily have happened in other provinces also. Can we deny, Sir, or can anyone else deny the fact that there were people at that time in Madras Presidency who made it their business to use all possible violent means in order to subvert our own society in the South, in order to go to the aid of a gang of people who had made themselves the enemies of the society as a whole in India and of the State, the Indian State as well as the Provincial States? Sir, what is it that the Madras Government could have done except what it had actually done—just catch hold of those people, restrain their liberties for a temporary period in order to prevent them from going to the rescue or from abetting the violent means and methods adopted by the Razakar movement in a particular part of our country? It cannot be denied by these friends that many of these friends whose liberty had to be restrained for a time had been, directly or indirectly, in league with those people who had their contacts with the Razakar movement; and under those circumstances how could it be possible for any society to safeguard itself except by telling these friends that they should hold themselves in check and if they could not do so voluntarily it would be the charge of the Society, of the State, to restrain the liberties of these people for a time?

[Prof. N. G. Ranga]

Secondly, Sir, let us not forget that there is a world-wide conflict today between two great ideologies. There is totalitarianism on the one side, and on the other side, there is democracy. In this conflict we have to decide what we are going to do. These Fundamental rights can come to be exercised only by that society and those individuals who have a due respect for law, who have a due respect for fundamental rights of other people along with themselves and who therefore are prepared to behave themselves with a due sense of responsibility and restraint. Wherever such conditions do not obtain and wherever there are groups and parties who organize and make it their business to destroy the State and try to capture the State, certainly it would not be possible for any State or Society to respect these fundamental rights. That is the first pre-requisite for the exercise of these fundamental rights. Sir, it is a well-known fact that these concepts of fundamental rights have emerged out of the terrible sufferings that people have had to go through during the last two centuries in different countries all over the world. These are all sacred rights, rights that are sanctified by the very experiences of people in different countries. It is all true but why are these rights being conceded and how are they being claimed? Because the personality of the individual is found to be inviolable. The individual is found to be just as violable as society. An individual's right to liberty has got to be safeguarded at all costs, in every possible manner by the society as well as the State. If the life of that society itself is endangered, then.

Maulana Hasrat Mohani (United Provinces : Muslim): What about the right to strike?

Mr. Vice-President : Maulana Saheb, please do not interrupt.

Prof. N. G. Ranga: Mahatma Gandhi himself has already answered it in regard to strikes. It is possible for anyone to be allowed to go on strike or groups of people to go on strike provided they keep themselves non-violent. The moment they over-step the bounds of non-violence and begin to exercise violence against others who do not believe in that line of action re-strikes,—whether you call them strikes or lock-outs, they have got to be banned and the people who indulge in these lock-outs have got to be dealt with in the only way by which society can possibly do so in order to safeguard itself. Sir, let us remember that individuals can exist not in vacuum but in a society. Therefore, the first condition precedent for any individual for the exercise of fundamental rights is the existence of society the fundamentals of which, the soundness of which is its own organization. Therefore, those individuals who do not believe in social life, who are anti-social, who are intend upon disrupting and destroying society necessarily cannot be expected to claim and enjoy these fundamental rights. This is a very fair condition that every individual has got to satisfy.

Another thing is, it is not the Supreme Court which is going to ensure the exercise of this fundamental right to individuals or groups as much as an individual's and group's own capacity to stand up to its own fundamental rights and make the necessary sacrifice. It can do so in one of two ways. One is that of the Western World, that is, resorting to violence. The other is that of Mahatma Gandhi—resorting to *Satyagraha*. Now, a *Satyagrahi* cannot at one and the same time be both non-violent and violent in his expression, in his activities, in his incitement of others, in the various other methods that he adopts in order to subvert the society. A *Satyagrahi* has necessarily to be a peculiar individual, an individual distinguished from other individuals by the degree to which he can restrain himself and also ask his own followers to restrain themselves and pursue a non-violent line of action both in word, thought and action. Now such a *Satyagrahi* can always safeguard his own fundamental rights. In view of the fact that everyone cannot be a *Satyagrahi* and ordinary people also have got to be safeguarded, these

fundamental rights are being enshrined in this particular chapter. Therefore those who wish to enjoy this fundamental right, to safeguard their enjoyment, have got to discharge particularly their duty towards society as a whole. There may be groups and there are groups in this country, there may be individuals and there are plenty of them in this country, who do not believe in their duties towards society, but who only wish to exploit to the uttermost possible extent these fundamental rights. We know, Sir, of certain pamphleteers; we know of certain organizations; also we know of certain other communal champions who wish to exploit these liberties. What is it that Society has got to do? If they are only of negligible importance, then it is open to the ordinary rule of law to restrain them. But if on the other hand they become sufficiently powerful and vociferous they have got to be dealt with by the State as such and if they attain a province-wide or a nation-wide importance, it will be the duty of the President of the Republic to invoke article 280 and declare an emergency and suspend the operation of these fundamental rights and deal with these gentlemen as they deserve to be.

Shri H. V. Kamath : Does my honourable Friend, Prof. Ranga, propose to deal with even vociferous minorities?

Prof. N. G. Ranga: Yes, but only those people who are vociferous in abusing others, without any sense of responsibility, without any restraint and without any sense of morality; and we know that we have had plenty of such people who were the cause of lot of disturbances, and.....

Mr. Vice-President : The answer you have already given is sufficient.

Prof. N. G. Ranga: Thank you, Sir.

Then, Sir, it is true the majority also can go mad, and therefore the people have to be protected from their tyranny. The majority can go mad in an organized and in an unorganized fashion. If they go mad in an unorganized fashion, without any leadership from the State, or society or anybody, then it is the duty of the State to come into the arena and deal with those people as best as it might, even at the peril of its own existence. A State which is not prepared to restrain its own unorganized or disorganized majorities, who believe in inflicting private punishment upon various people, whether they are organised or not, such a State does not deserve to exist. But on the other hand, if the majority is organized and it begins to function through the State itself, then who is to guarantee and uphold these fundamental rights? It may be said that the Supreme Court would be expected to do so. It is also quite possible that when an organized majority is functioning through the State and begins to misbehave in this fashion, the Supreme Court might be set at naught as it happened in Nazi Germany and Fascist Italy. Then what is the guarantee for these individuals or groups? There is a book by Prof. Laski called "Liberty in the modern State" in which...

Shri Krishna Chandra Sharma (United Provinces : General) : But what is the point? What is the relevancy of all that you say now to the point under discussion?

Prof. N. G. Ranga: There he makes it perfectly clear that.

Mr. Vice-President : Mr. Sharma wants to know to what extent what you say is relevant to the article under discussion.

Shri H. V. Kamath : Sir, it is for you to decide.

Mr. Vice-President : But I want to hear Prof. Ranga I think there is some connection however slight.

Prof. N. G. Ranga: The Supreme Court expected to issue writs, mandamus, and various other things. If there were an organised party which refuses to respect these writs issued by the Supreme Court, what is the guarantee then for these fundamental rights? That is the relevancy. My answer is, it is the

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duty of every group to offer Satyagraha, provided that Satyagraha is carried out, and is offered in the Gandhian fashion, in a non-violent manner, and in a self-sacrificing fashion; these are the conditions under which Satyagraha can be offered. That is the instrument that Mahatma Gandhi has fashioned for the country and.

Shri H. V. Kamath : Sir, is the right to offer Satyagraha a fundamental right?

Prof. N. G. Ranga : Sir, I can only say that it is basic to all your fundamental rights. But Satyagraha need not be enshrined in any constitution. It can be enshrined only in the capacity of the people to offer sacrifice, and to offer themselves also as sacrifice. This conception of fundamental rights has come into existence in the world only because there were so many people in the history of the world who were prepared to offer themselves to martyrdom in order to establish these rights, in order to get this conception accepted by the whole of the civilized world and by the whole of the democratic world as fundamental rights.

Lastly, Sir, I wish to sound a note of warning. Let us remember that we can exercise these rights only within the orbit or within the ambit of democracy, and whenever there is serious danger to the very concept of democracy, to the exercise of democratic functions, to the institutions of democracy, it must be the duty of the State as well as that of the President of our Republic to set aside these fundamental rights in order to safeguard our people. Our friends, of course, who claim to belong to some sort of minority are nervous about it. But let me warn them in this way. It may be that their religion countenances totalitarianism, may be their cult countenances totalitarianism, but there can be no place for totalitarianism in this country, and if ever any group or individual were to try to establish totalitarianism in this country, especially to establish a totalitarian State, then it will be the sacred duty of the Supreme Court as well as that of the President of the Republic of this country to see that this Constitution is maintained at all costs, and these fundamental rights are not allowed to be exercised by those people or groups in such a way as to jeopardise our society.

Mr. Vice-President: Shri Rohini Kumar Chaudhari. You will please be brief.

Shri Rohini Kumar Chaudhari (Assam : General): Mr. Vice-President, Sir, this is the first time that I have brought these books to my table, and the House need not be apprehensive because I have brought them here, that I will be unnecessarily long or irrelevant. I would only like to tell you, sir, once again that I am rather short of hearing, so far as bell-rings are concerned, though I can hear all right where whispering accusations are made.

Mr. Vice-President : I wish I had known this before, I would have thought twice before calling you to the mike !

Shri Rohini Kumar Chaudhari : Sir, I welcome this article because the enunciation of these fundamental rights would be meaningless if this article were not here to enable us to get our justice from the Supreme Court. I can quite understand the coyness of my friend Mr. Naziruddin Ahmad while he was moving his amendment. After all the man who is always fond of finding out small faults of drafting has been caught napping, and it has been found, and he has himself admitted it, that the whole of his amendment is not explicit. But I would submit that what he intended to convey has been conveyed by the article itself. Every person will have the right to move the Supreme Court whenever he finds that a fundamental right has been infringed. Supposing we want to say that the Queensway is open to traffic, one need not say that every person shall have the right to go through

Queensway. Similarly, the article as it stands here is quite explicit and does not require the amendment tabled by Mr. Naziruddin Ahmad.

I also welcome the provision which has been made herein that in some cases the Supreme Court may delegate its powers to some other courts. That will be a blessing to distant places like Assam and Coorg, because people from such places will find it extremely difficult to come and seek relief in the Supreme Court which is bound to be located somewhere in the United Provinces or Delhi. But at the same time I would like to mention here that such power of delegation should be exercised very sparingly because after all the personnel of the Supreme Court would no doubt be more qualified than the personnel of a High Court. Therefore to shut out the possibility or the chance of any particular province from coming to the Supreme Court and of making the High Court to exercise the Supreme Court jurisdiction would be somewhat anomalous.

I now come to the fourth clause of article 25. I wish I had spoken before my honourable Friend Mr. Ananthasayanam Ayyangar had spoken because he would have been able to explain some of the difficulties which I feel about this clause. Furthermore, I as well as most members of the House look upon our honourable Friend Mr. Ananthasayanam Ayyangar as something akin to Guru Dronacharya of old who can, notwithstanding his personal feelings and opinions, give a proper interpretation of the provision as taken by the framers of this draft. [Subject to correction I consider that clause (4) should have been omitted or there should be a substantial modification of this clause. The Fundamental rights are in the very nature of them rights which should never be taken away from the people. According to this clause these Rights can be taken away in a state of emergency.] Article 280 says that in a state of emergency the President can keep the whole of article 25 suspended. Let us see what will be the result of this suspension—what will be the evil effect and what may be the possible good effect of this suspension. The evil effect of this suspension would be that in a state of emergency you can ignore article 11 which deals with untouchability. That is to say we conceive a set of circumstances which would entitle the State or any person to infringe against article 11 and go without any punishment. Any State, or any temple or any authority can infringe article 11 in a state of emergency. Does this House support such a view? Will the House under any circumstances agree to a suspension of the Constitution in so far as article 25 is concerned, and allow people who infringe against it to go with impunity?

Let us take again article 17 where traffic in human beings has been prohibited. Does the House agree that a suspension of the Constitution should take effect so that the people can indulge in traffic in human beings with impunity? I say that such a state of things may actually take place. Remember the last war when actually traffic in human beings was carried on for the exigencies of the war. What is after all the Women's Volunteer Service? What was W.A. C.? Everybody knows for what purpose the Women's Volunteer and Auxiliary Corps were organized and what functions they carried on. Traffic in human beings was actually carried on there, and it was carried on during the war in different cities where women were actually engaged for dancing and other purposes in order to keep up the morale of the troops. Do you, by agreeing to a suspension of article 25, countenance the possibility of traffic in human beings of this kind in a state of emergency which is spoken of during the war? I therefore wish that this last clause—clause (4)—of this article should either be deleted or amended in such a manner that it is not possible to suspend the entire article at any time but it can be suspended under certain most unavoidable circumstances. But, as a matter of fact I cannot envisage any circumstance which would make it necessary for you to suspend this article in any respect. During a state of emergency

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what you may want to suspend is article 13 where freedom of speech, freedom of association and all these things have been mentioned. It may be necessary during a period of emergency or when war is actually going on, to restrict the freedom of speech and the freedom of movement and other rights which are mentioned in that article. But that article also contains in every phase of it provisos which empower the State to restrict those rights. So far as that article, provisions which are most essential during a state of emergency, is concerned you have already got limitations and restrictions mentioned in the article itself. For that purpose the suspension of article 25 is not necessary. Therefore in my humble opinion, and subject to corrections and explanations which might be given by my honourable Friend Dr. Ambedkar or by any other member in this House, I would submit that it would be better from every point of view to do away with this clause (4) altogether or to amend it in a suitable manner.

Pandit Lakshmi Kanta Maitra (West Bengal : General): Do you suggest that article 280 should also be deleted?

Shri Rohini Kumar Chaudhari : I was referring to article 280 in my speech.

Mr. Vice-President : You are not called upon to answer that.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the amendments that have been moved to this article I can only accept amendment No. 789 which stood in the name of Mr. Baig but which was actually moved by Mr. Naziruddin Ahmad. I accept it because it certainly improves the language of the draft. With regard to the other amendments I shall first of all take up the amendment (No. 801) moved by Mr. Tajamul Husain and the amendment (No. 802) moved by Mr. Karimuddin. Both of them are of an analogous character. The object of the amendment moved by Mr. Tajamul Husain is to delete altogether sub-clause (4) of this article and Mr. Karimuddin's amendment is to limit the language of sub-clause (4) by the introduction of the words 'in case of rebellion or invasion'.

Now, Sir, with regard to the argument that clause (4) should be deleted, I am afraid, if I may say so without any offence, that it is a very extravagant demand, a very tall order. There can be no doubt that while there are certain fundamental rights which the State must guarantee to the individual in order that the individual may have some security and freedom to develop his own personality, it is equally clear that in certain cases where, for instance, the State's very life is in jeopardy, those rights must be subject to a certain amount of limitation. Normal, peaceful times are quite different from times of emergency. In times of emergency the life of the State itself is in jeopardy and if the State is not able to protect itself in times of emergency, the individual himself will be found to have lost his very existence. Consequently, the superior right of the State to protect itself in times of emergency, so that it may survive that emergency and live to discharge its functions in order that the individual under the aegis of the State may develop, must be guaranteed as safely as the right of an individual. I know of no Constitution which gave fundamental rights but which gives them in such a manner as to deprive the State in times of emergency to protect itself by curtailing the rights of the individual. You take any Constitution you like, where fundamental rights are guaranteed; you will also find that provision is made for the State to suspend these in times of emergency. So far, therefore, as the amendment to delete clause (4) is concerned, it is a matter of principle and I am afraid I cannot agree with the Mover of that amendment and I must oppose it.

Now, Sir I will go into details My Friend Mr. Tajamul Husain drew a very lurid picture by referring to various articles which are included in the Chapter dealing with Fundamental Rights. He said, here is a right to take water, there is a right to enter a shop, there is freedom to go to a bathing

ghat. Now, if clause (4) came into operation, he suggested that all these elementary human rights which the Fundamental part guarantees—of permitting a man to go to a well to drink water, to walk on the road, to go to a cinema or a theatre, without any let or hindrance—will also disappear. I cannot understand from where my friend Mr. Tajamul Husain got this idea. If he had referred to article 279 which relates to the power of the President to issue a proclamation of emergency, he would have found that clause (4) which permits suspension of these rights refers only to article 13 and to no other article. The only rights that would be suspended under the proclamation issued by the President under emergency are contained in article 13; all other articles and the rights guaranteed thereunder would remain intact, none of them would be affected. Consequently, the argument which he presented to the House is entirely outside the provisions contained in article 279.

Shri H. V. Kamath : What about article 280?

The Honourable Dr. B. R. Ambedkar : All that it does is to suspend the remedies. I thought I would deal with that when I was dealing with the general question as to the nature of these remedies, and therefore I did not touch upon it here.

Taking up the point of Mr. Karimuddin, what he tries to do is to limit clause (4) to cases of rebellion or invasion. I thought that if he had carefully read article 275, there was really no practical difference between the provisions contained in article 275 and the amendment which he has proposed. The power to issue a proclamation of emergency vested in the President by article 275 is confined only to cases when there is war or domestic violence.

Kazi Syed Karimuddin : Even if war is only threatened?

The Honourable Dr. B. R. Ambedkar: Certainly. An emergency does not merely arise when war has taken place—the situation may very well be regarded as emergency when war is threatened. Consequently, if the wording of article 275 was compared with the amendment of Mr. Karimuddin, he will find that practically there is no difference in what article 275 permits the President to do and what he would be entitled to if the amendment of Mr. Karimuddin was accepted. I therefore submit, Sir, that there is no necessity for amendments Nos. 801 and 802. So far as I am concerned, No. 801 is entirely against the principle which I have enunciated.

I will take up the amendments of my friend Mr. Kamath, No. 787 read with No. 34 in List III, and the amendment of my friend Mr. Sarwate, No. 783 as amended by No. 43. My friend Mr. Kamath suggested that it was not necessary to particularize, if I understood him correctly, the various writs as the article at present does and that the matter should be left quite open for the Supreme Court to evolve such remedies as it may think proper in the circumstances of the case. I do not think Mr. Kamath has read this article very carefully. If he had read the article carefully, he would have observed that what has been done in the draft is to give general power as well as to propose particular remedies. The language of the article is very clear:

"The right to move the Supreme Court by appropriate proceeding for the enforcement of the rights conferred by this Part is guaranteed.

The Supreme Court shall have power to issue directions or orders in the nature of the writs of....."

These are quite general and wide terms.

Shri H. V. Kamath : On a point of explanation, Sir. With the accepted amendment of my friend Mr. Baig, the clause will read thus:

"The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*,...."

The Honourable Dr. B. R. Ambedkar : Yes, the words "directions and orders" are there.

Shri H. V. Kamath : And "writs".

The Honourable Dr. B. R. Ambedkar : Yes.

While the powers of the Supreme Court to issue orders and directions are there, the draft Constitution has thought it desirable to mention these particular writs. Now, the necessity for mentioning and making reference to these particular writs is quite obvious. These writs have been in existence in Great Britain for a number of years. Their nature and the remedies that they provided are known to every lawyer and consequently we thought that as it is impossible even for a man who has a most fertile imagination to invent something new, it was hardly possible to improve upon the writs which have been in existence for probably thousands of years and which have given complete satisfaction to every Englishman with regard to the protection of his freedom. We therefore thought that a situation such as the one which existed in the English jurisprudence which contained these writs and which, if I may say so, have been found to be knave-proof and fool-proof, ought to be mentioned by their name in the Constitution without prejudice to the right of the Supreme Court to do justice in some other way if it felt it was desirable to do so. I, therefore, say that Mr. Kamath need have no ground of complaint on that account.

My friend Mr. Sarwate said that while exercising the powers given under this article, the Court should have the freedom to enter into the facts of the case. I have no doubt about it that Mr. Sarwate has misunderstood the scope and nature of these writs. I therefore, think, that I need make no apology for explaining the nature of these writs. Anyone who knows anything about the English law will realise and understand that the writs which are referred to in the article fall into two categories. They are called in one sense "prerogative writs", in the other case they are called "writs in action". A writ of *mandamus*, a writ of prohibition, a writ of *certiorari*, can be used or applied for both; it can be used as a prerogative writ or it may be applied for by a litigant in the course of a suit or proceedings. The importance of these writs which are given by this article lies in the fact that they are prerogative writs; they can be sought for by an aggrieved party without bringing any proceedings or suit. Ordinarily you must first file a suit before you can get any kind of order from the Court, whether the order is of the nature of *mandamus*, prohibition or *certiorari* or anything of the kind. But here, so far as this article is concerned, without filing any proceedings you can straightaway go to the Court and apply for the writ. The object of the writ is really to grant what I may call interim relief. For instance, if a man is arrested, without filing a suit or a proceeding against the officer who arrests him, he can file a petition to the Court for setting him at liberty. It is not necessary for him to first file a suit or a proceeding against the officer. In a proceeding of this kind where the application is for a prerogative writ, all that the Court can do is to ascertain whether the arrest is in accordance with law. The Court at that stage will not enter into the question whether the law under which a person is arrested is a good law or a bad law, whether it conflicts with any of the provisions of the Constitution or whether it does not conflict. All that the Court can inquire in a *habeas corpus* proceedings is whether the arrest is lawful and will not enter into the question—at least that is the practice of the Court—of the merits of the law. When a person is actually arrested and his trial has commenced, it is in the course of those proceedings that the court would be entitled to go into the facts and to come to a decision whether a particular law under which a person is arrested is a good law or a bad law. Then the court will go into the question whether it conflicts with the provisions of the Constitution. Consequently, the

amendment moved by my friend Shri V. S. Sarwate, if I may say so, is quite out of place. It is not here that such a provision could be made. If he refers to article 115, he will find that a provision for similar writs has been made there. But those are writs which could be issued inconnection with questions of fact and law. They would certainly be investigated by the Courts.

Now, Sir, I am very glad that the majority of those who spoke on this article have realised the importance and the significance of this article. If I was asked to name any particular article in this Constitution as the most important—an article without which this Constitution would be a nullity—I could not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it and I am glad that the House has realised its importance.

There is however one thing which I find that the Members who spoke on this have not sufficiently realised. It is to this fact that I would advert before I take my seat. These writs to which reference is made in this article are in a sense not new. *Habeas corpus* exists in our Criminal Procedure Code. The writ of *Mandamus* finds a place in our law of Specific Relief and certain other writs which are referred to here are also mentioned in our various laws. But there is this difference between the situation as it exists with regard to these writs and the situation as will now arise after the passing of this Constitution. The writs which exist now in our various laws are at the mercy of the legislature. Our Criminal Procedure Code which contains a provision with regard to *habeas corpus* can be amended by the existing legislature. Our Specific Relief Act also can be amended and the writ of *habeas corpus* and the right of *mandamus* can be taken away without any difficulty whatsoever by a legislature which happens to have a majority and that majority happens to be a single-minded majority. Hereafter it would not be possible for any legislature to take away the writs which are mentioned in this article. It is not that the Supreme Court is left to be invested with the power to issue these writs by a law to be made by the legislature at its sweet will. The Constitution has invested the Supreme Court with these rights and these writs could not be taken away unless and until the Constitution itself is amended by means left open to the Legislature. This in my judgment is one of the greatest safeguards that can be provided for the safety and security of the individual. We need not therefore have much apprehension that the freedoms which this Constitution has provided will be taken away by any legislature merely because it happens to have a majority.

Sir, there is one other observation which I would like to make. In the course of the debates that have taken place in this House both on the Directive Principles and on the fundamental Rights. I have listened to speeches made by many members complaining that we have not enunciated a certain right or a certain policy in our Fundamental Rights or in our Directive Principles. References have been made to the Constitution of Russia and to the Constitutions of other countries where such declarations, as members have sought to introduce by means of amendments, have found a place. Sir, I think I might say without meaning any offence to anybody who has made himself responsible for these amendments that. I prefer the British method of dealing with rights, The British method is a peculiar method, a very real and a very sound method. British jurisprudence insists that there can be no right unless the Constitution provides a remedy for it. It is the remedy that makes a right real. If there is no remedy, there is no right of all, and I am therefore not prepared to burden the Constitution with a number of pious declarations which may sound as glittering generalities but for which the Constitution makes no provision by way of a remedy. It is much better to be limited in the scope of our rights and to make them real by enunciating remedies than to have a lot of pious wishes embodied in the Constitution. I am very glad that this House has seen that

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the remedies that we have provided constitute a fundamental part of this Constitution. Sir, with these words I commend this article to the House.

Shri H. V. Kamath : On a point of clarification, Sir, as we are dealing with justiciable fundamental rights and the guaranteeing of these by the Supreme Court and in view of the fact that article 280 has also been invoked, will it not be more desirable to say that "the rights guaranteed by this article shall not be suspended wholly or in part".... or any similar set of words which the legal luminaries may choose?

The Honourable Dr. B. R. Ambedkar : "Shall not be suspended" covers both. It is unnecessary to specify it.

Mr. Vice-President : I will now put the amendments one by one to the vote.

The question is:

"That for clause (1) of article 25, the following clause be substituted, namely:

'(1) Every person shall have the right by appropriate proceedings to enforce the rights conferred by this Part.' "

The amendment was adopted.

Mr. Vice-President : The question is:

"That in clause (1) of article 25, for the words 'Supreme Court' the words "Supreme Court or any other Court empowered under clause (3) to exercise the powers of the Supreme Court" be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 787 standing in the name of Mr. Kamath.

Shri H. V. Kamath : In view of the remarks made by Dr. Ambedkar on this matter, I do not wish to press it.

The amendment was, by the leave of the Assembly, withdrawn.

Mr. Vice-President : Then we come to amendment No. 789 standing in the name of Mr. Mahboob Ali Baig, but moved by Mr. Naziruddin Ahmad.

The question is:

"That in clause (2) of article 25, for the words 'in the nature of the writs of the words 'or writs, including writs in the nature of' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 794 standing in the names of Dr. Ambedkar, Mr. Madhava Rau and Mr. Saadulla.

The question is:

"That for existing clause (3) of article 25, the following clause be substituted:

'(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2) of this article, Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2) of this article.'"

The amendment was adopted.

Mr. Vice-President : Amendment No. 43 of List 1 standing in the name of Mr. Sarwate.

Shri V. S. Sarwate : I do not wish to press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Amendment No. 44 of List 1.

The question is:

"That in amendment No. 794 of the List of Amendments, in the proposed clause (3) of article 25, the words 'Without prejudice to the powers conferred on the Supreme Court by clause (2) of this article' be deleted.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 801.

The question is:

"That clause (4) of article 25 be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 802 standing in the name of Mr. Karimuddin. The question is:

"That in clause (4) of article 25, for the words 'as otherwise provided for by this Constitution' the words 'in case of rebellion or invasion and when State of Emergency is proclaimed under Part XI of this Constitution' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 805 by Mr. Naziruddin Ahmad. The question is:

"That in clause (4) of article 25, for the word 'guaranteed' the word 'conferred' be substituted."

The amendment was negatived.

Mr. Vice-President : I will now put to the vote article 25 as amended by amendments Nos. 789 and 794. The question is:

That article 25, as amended, stand part of the Constitution.

The motion was adopted.

Article 25, as amended, was added to the Constitution.

Article 25-A

Mr. Vice-President : We next come to article 25-A. Amendment No. 808 by Mr. Lari.

(The amendment was not moved.)

Article 26

Mr. Vice-President : We then come to article 26. The motion before the House is:

That article 26 form part of the Constitution.

Amendment No. 809 is of a negative character and therefore disallowed.

(Amendment No. 810 was not moved.)

Amendment Nos. 811 and 812 are of similar import. I should say they are almost identical. I allow 811 to be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 26 for the words 'guaranteed in' the words 'conferred by' be substituted."

This part does not guarantee but only confers these rights. Therefore to bring the language in conformity, I propose this amendment.

Mr. Vice-President : There is an amendment to this amendment. No 48 of List I.

(The amendment was not moved.)

(Amendment No. 813 was not moved.)

I shall now put article 26 to vote.

Shri T. T. Krishnamachari: How can the article be put to the vote before the amendment is put to the vote?

Mr. Vice-President : The question is:

"That in article 26 for the words 'guaranteed in' the words 'conferred by' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is that:

That article 26, as amended stand part of the Constitution.

The motion was adopted.

Article 26, as amended, was adopted to the Constitution.

Article 27

(Amendment Nos. 814, 815 & 816 were not moved.)

Mr. Vice-President : Amendment Nos. 817 and 818 are to be considered together. 817 may be moved; it stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for clause (a) of article 27 the following be substituted:

'(a) with respect to any of the matters which, under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26 may be provided for by legislation by Parliament, and', "

The object of introducing this addition of clause (2a) of article 10 is because this is a new clause which was adopted by this House. It is, therefore, necessary to make a reference to it in this article.

Mr. Vice-President : There is an amendment to this amendment.

The Honourable Dr. B. R. Ambedkar : I have moved it as amended.

Mr. Vice-President: I see.

(Amendment No. 818 was not moved.)

Amendment No. 819 is a verbal amendment. Amendment No. 820 may be moved.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for the words 'to provide for such matters and for prescribing punishment for such acts' the words 'for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

Mr. Vice-President : Amendment No. 48 of List I standing in the name of Mr. Naziruddin Ahmad. Does he wish to move it?

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in amendment Nos. 820 and 822 of the List of amendments, in article 27 and in the proviso to article 27, the words 'in this article', wherever they occur, and the words 'of this Constitution' in the Explanation be deleted."

Mr. Vice-President : It is very much like a verbal amendment.

Mr. Naziruddin Ahmad : Yes, Sir; because I was called, I had to obey the ruling of the Chair and that is why I came to the mike to move it, but this is verbal.

Mr. Vice-President : I am very grateful. I take it that you are not moving it.

Mr. Naziruddin Ahmad : No, Sir. I have already moved the amendment, but I do not wish to press it.

Mr. Vice-President : Amendments Nos. 822 and 823 are of similar import. No. 822 can be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for the proviso and explanation to article 27, the following be substituted:

'Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.'

'Explanation.—In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution.' "

(Amendment Nos. 50 of List No. 1, 65 of List No. IV and 823 were not moved.)

Mr. Vice-President : The article is now open for discussion.

(At this stage Mr. Kamath rose to speak.)

Mr. Vice-President : I hope you will permit me to get the things through before we disperse, in which case, I shall adjourn the House at 1 o'clock.

Shri H. V. Kamath : I am equally anxious. Mr. Vice-President, I am here seeking only a little light from Dr. Ambedkar with regard to his amendment No. 820 moved by him. I fail to see clearly why the words in the article as it stands at present should be substituted by the words he proposes to. In case his amendment is accepted, it will mean that Parliament shall have power only for prescribing punishment for the acts referred to in clause (b). Then what about the Parliament's power to make laws with respect to any of the matters which under this power are required to be provided for by legislation in clause (a)? Does he intend by his amendment to take away the power which is sought to be conferred by clause (a) of this article? It is conceivable that there are certain matters about which there are not laws already in force. Therefore, if there be such matters with regard to which there is no law in force, does he intend by his amendment to take away the power sought to be conferred by clause (a) of this article, which is 'to make laws with respect to any of the matters which under this Part are required to be provided for by legislation by Parliament'? The amendment seeks to give power only for prescribing punishment and not for making laws with respect to the matters required to be provided for by legislation under this Part. I want to know exactly what the import of his amendment is and why this clause (a) is sought to be amended in this fashion.

The Honourable Dr. B. R. Ambedkar : I am sorry, Mr. Kamath has not been able to understand the scheme which is embodied in article 27. This article embodies three principles. The first principle is that wherever this Constitution prescribes that a law shall be made for giving effect to any fundamental right or where a law is to be made for making an action punishable, which interferes with Fundamental Rights, that right shall be exercised only by Parliament, notwithstanding the fact that having regard to the List which deals with the distribution of power, such law may fall within the purview of the State Legislature. The object of this is that Fundamental Rights, both as to their nature and as to the punishments involved in the infringement thereof, shall be uniform throughout India. Therefore, if that object is to be achieved, namely, that Fundamental Rights shall be uniform and the punishments involved in the breach of Fundamental Rights also shall be uniform, then, that power must be exercised only by the Parliament, so that there may be uniformity.

The second thing is this. If there are already Acts which provide punishments for breaches of Fundamental Rights, unless and until the Parliament makes another or a better provision, such laws will continue in operation. That is the whole scheme of the thing. I do not see why there should be any difficulty in understanding the provisions contained in article 27.

Shri H. V. Kamath : I am sorry, Sir, that Dr. Ambedkar has not been able to follow me clearly. *(Laughter)*

The Honourable Dr. B. R. Ambedkar : It is quite possible.

Mr. Vice-President : Mr. Kamath, it may be the other way.

Shri H. V. Kamath : Sir, he has answered a different point from the one which I raised. My point was different. Perhaps he was not listening to me carefully. He was talking to someone else. If you will permit me, Sir, I shall try to explain the point.

Mr. Vice-President : Yes; but do not address the House; you must address the Chair.

Shri H. V. Kamath : I am addressing you, Sir, as I always do. The difficulty that arises is this. In the article as it stands at present, clause (a) gives Parliament alone the power. I do not question this; I agree Parliament and Parliament alone should have the right. You say here Parliament shall

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have power to make laws with regard to any of the matters. Further on, you say that Parliament shall, as soon as may be, after the commencement of this Constitution, make laws to provide etc., etc. Now, Dr. Ambedkar wants to substitute this latter part by amendment No. 820. You want to omit the words "provide for such matters" and retain only the proviso as regards punishment. What about making laws for such matters? Why do you delete that portion? Why do you retain only the part regarding punishment? That was my point, but Dr. Ambedkar has answered a different point.

The Honourable Dr. B. R. Ambedkar : The reason why for instance, I have introduced an amendment in clause (a) is because it is only in specific matters that Parliament has been given this penal authority and these articles are referred to in my amendment. My friend Mr. Kamath will see that clause (a) contains no reference to any of the articles which specifically give Parliament the power to make laws. It is to make that point clear that I thought it would be desirable to make a reference to clause (2a) of article 10, article 16, clause (3) of article 25 and article 26, because, these are the specific articles which are to be dealt with exclusively by Parliament.

Mr. Vice-President : I shall now put the amendments to vote. All of them stand in the name of Dr. Ambedkar.

Amendment No. 817 as amended by amendment No. 56 of List III.

The question is:

"That for clause (a) of article 27 the following clause be substituted:

'(a) with respect to any of the matters which under clause (2a) of article 10, article 16, clause (3) of article 25, and article 26, may be provided for by legislation by Parliament, and,' "

The amendment was adopted.

Mr. Vice-President : Amendment No. 820.

The question is:

"That for the words 'to provide for such matters and for prescribing punishment for such acts' the words 'for prescribing punishment for the acts referred to in clause (b) of this article' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 822.

The question is:

"That for the proviso and explanation to article 27, the following be substituted:

'Provided that any law in force immediately before the commencement of this Constitution in the territory of India or any part thereof with respect to any of the matters referred to in clause (a) of this article or providing for punishment for any act referred to in clause (b) of this article, shall, subject to the terms thereof, continue in force therein, until altered or repealed or amended by Parliament.

'Explanation.—In this article the expression 'law in force' has the same meaning as in article 307 of this Constitution.' "

The amendment was adopted.

Mr. Vice-President : The question before the House is :

"That article 27, as amended, stand part of the Constitution."

The motion was adopted.

Article 27, as amended, was added to the Constitution.

Mr. Vice-President : The House stands adjourned till Ten of the Clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Friday the 10th December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 10*th December,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

B. Pocker Sahib Bahadur (Madras : Muslim): Mr. Vice-President, Sir, may I have your permission to move that the House adjourn at one o'clock as to-day is Friday and the Muslim members have to attend their Jumma prayers?

Mr. Vice-President (Dr. H. C. Mookherjee): We shall adjourn at one o'clock. That much of consideration will be shown to our Muslim brethren and I am quite sure that the House agrees with me.

Honourable Members : Yes.

B. Pocker Sahib Bahadur : Thank you, Sir.

DRAFT CONSTITUTION—(*Contd.*)

Article 27-A

Mr. Vice-President : We shall consider Amendment No. 824 to article 27-A.

(The amendment was not moved.)

Mr. Vice-President : Amendment No. 825 also in the name of Dr. Raghuvira. He is not in the House.

(Amendment No. 825 was not moved.)

Mr. Vice-President : Now we come to Part V. On page 106 of the printed list of amendments, we have amendment No. 1032 on the new articles 41—44 in the name of Shri Gopal Narain.

Prof. K. T. Shah (Bihar : General): Sir, may I remind you that an amendment of mine was held over—amendment No. 1030—which involves a big principle. By agreement it was held over with article 40-A. That is on page 105.

Mr. Vice-President : Yes, amendment No. 1030, Prof. K.T. Shah.

New Article 40-A

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That after article 40, the following new article be inserted:

'40-A. There shall be complete separation of powers as between the principal organs of the State, *viz.,* the Legislative, the Executive, and the Judicial.' "

Sir, I regard this as the most important, the very basic requirement of what I would call a Liberal constitution. I am aware, Sir, that this Draft has been founded on the compromise between what are known as Presidential governments and Parliamentary governments. The Parliamentary government has a sort of link between the Executive, the Legislative and the Judiciary. The Presidential tries to keep no such link, and has complete separation of powers between the three principal organs of the State, each embodying the sovereignty of the people in the different aspects of a State's activities.

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The ideal, however, and the reasons for that ideal, which have guided many modern States in basing their constitution upon a doctrine of complete separation have arisen from bitter past experience. In the constitutions like that of England centuries ago, the ultimate combination of all authority in the person of the King, had lead to many evils culminating in a Civil War, ending in the execution of one king, and a bloodless Revolution leading to the abdication or expulsion of another king. The arrangement which was evolved thereafter has been kept in conformity with the genius of the British people, not so much by a written Constitution, as by evolving constitutional conventions, supported by centuries of usage. And these have become even more sacred than the written word in a written constitution.

But I do not think this will be applicable to us in this country at this moment. I do not think that it would be easy to realise in new grounds, where new experiments of self-government are being tried on an imperial scale. As such I feel persuaded that when we start our own Constitution, when we make a beginning in this land, in the working of democracy, I think it would be best if we have complete separation of powers between the three principal organs of the State.

For one thing, Sir, if you maintain the complete independence of all the three, you will secure a measure of independence between the Judiciary, for example, and the Executive, or between the Judiciary and the Legislature. This, in my view, is of the highest importance in maintaining the liberty of the subject, the Civil Liberties and the rule of law. If there was contact between the Judiciary and the Legislature, for instance, if it was possible to interchange between the highest judicial officers and the membership of the legislature, then, I am afraid, the interpretation of the law will be guided much more by Party influence than by the intrinsic merits of each case. The Legislature in a democratic assembly is bound to be influenced by Party reasons rather than by reasons of principle.

I am not decrying Parties. Please do not misunderstand me. All I am saying is that after all, Parties are mundane, dealing with mundane things, and as such they are bound to attach much more importance to considerations of the moment, to merely transitory ideas, to importance of personalities, by which a Judiciary would not be affected. It is of the utmost importance that the Judiciary should be above suspicion, and, therefore, out of or above any contamination. I hope the word is not hard to anybody. It should be above contamination by political prejudices that are rife in all political parties.

If contact or connection is maintained between the Judiciary and the Executive organs of the State, there is also the possibility of undue influence, of misleading, of misdirecting and mis-influencing those who are appointed to interpret the Constitution, those who are appointed to be guardians of Civil Liberties, those who have to administer justice.

In the environment in which we are living, in the traditions under which our judicial system has been evolved, I am afraid justice is a very costly luxury. It is really not the easy privilege of the poor man. Though you have provided a number of appeals, though you have provided a hierarchy of powers, you have also evolved, side by side, a most costly, a most wasteful, a most extravagant system of legal advice and legal assistance by professional lawyers, which only those who have undergone protracted litigation know how costly it is, how confusing, and how almost prohibitive it is, to ordinary mortals.

But even so, even granting that justice must not be cheap and must be available to those who can pay for this luxury, let it not be tainted, I beg you, let it not be influenced by considerations other than the intrinsic merits of each case.

When the chapter dealing with the Judiciary comes up before the House I may have occasion to move other amendments to point out where and how our present system suffers. But we should have the ideal of absolute purity of justice; even though it should happen to be class justice, let us make it at least free from taint of ulterior motives. The administrators of justice are unconsciously or sub-consciously coloured by their own inherited or acquired class prejudice. That cannot be helped all at one. But leaving that aside, and leaving aside even such a matter as was discussed yesterday in the House—of having the right to move the Supreme Court—I would say that, so long as you have not merely the combination of the Judiciary and the Executive, but also the possibility of translation from a high judicial office to an equally high or sonorous executive office; so long would your Judiciary be open to suspicion, so long your administration of justice would suffer by personal privileges or personal ambitions, and so long, therefore, you will not be able to maintain your civil liberties to the degree and in the manner of purity that is highly desirable in a country like this.

I would, therefore, suggest, in the first place, that the Judiciary should in any case be completely separated, and should attach regard only to the written letter of the law, irrespective, let us say, of the debates in this House at the time the Constitution itself was passed, irrespective of Party or personal considerations, irrespective of any other motives that might otherwise affect human and mundane things.

The same logic, in a different form, applies also to the case of the Legislature and the Executive. The less contact, there is between them, the better for both, I venture to submit. The executive is in a position to corrupt the House; the executive is in a position to influence votes of the members, by the number of gifts or favours they have in their power to confer in the shape of offices, in the shape of Ministerships, in the shape of Ambassadorships, in the shape of Consulships, and any number of offices which the Executive has it in its power to bestow. We have come to a stage in political evolution when the old system called the "spoils system" is no longer upheld in any civilised country. But yet, in fact, it does happen that fifty, sixty, seventy, a hundred people may be open to be influenced by those who have it in their power to distribute even the highest offices of the State. In England, for instance, out of 615 Members of Parliament, something like 70 members are Cabinet Ministers or Parliamentary Secretaries, or other Ministers and so on. This on a minor scale—I hope the House will pardon me for saying so—we are trying to reproduce here, by creating Ministers and Ministers of State and Deputy Ministers, and I suppose Parliamentary Secretaries to come. These may be—and I am sure they are—all honourable people influenced entirely by the desire of offering their services and their talents to the service of the country. But still the fact remains that the influence of the Party system, the idea of favouring one's own people, those who agree with them and become their camp-followers, is a much more influential and important consideration, than the absolute and exclusive eye to the merits or the fitness or the appropriateness of an individual for an office.

It is the exigency of Parliamentary government, as it has been developed in the West and which we are copying, that the consideration most prominent in such appointments is how many votes can an individual bring if he is appointed to a given ministerial office rather than how much real service he would be able to render to the country. As such I for one unhesitatingly and unexceptionally condemn the system of Parliamentary Government, the system of a link between the Legislature and the Executive on which this Constitution is based.

I know that my voice almost appears as a voice in the wilderness. But I think it is my duty to place this on record that, after a close study of the working of Constitutions elsewhere, after a close study stretching over perhaps thirty-five years of the development of political institutions in this country, and their

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influence on our public life, on our public morality, on even our private relations, I venture to suggest that this is not a very healthy example we are copying; and that the sooner we get rid of the combination of executive, judiciary and legislature in some supreme Cabinet, in some supreme authority, the better for us it would be.

Lastly, Sir, I come to the division between the Executive and the Legislature. It has worked for over a hundred and fifty years in America, quite satisfactorily, where the Legislature and the Executive are kept wholly apart. They had before them, much more than we have before us, the model of the English Constitution where the combination had already been achieved to a degree of perfection, that was looked upon even by such students as Burke or Fox as the basis of their Civil Liberties, of the liberalism of the English Constitution.

Nevertheless, under the influence and aegis of scholars and thinkers of the type of Jefferson, they did devise a constitution which kept completely apart the Legislature, the Executive and the Judiciary. For a hundred and sixty years that Constitution has worked without any serious difficulty. Even in the midst of wars, and even under internal civil war, they have been able to maintain their freedom and their liberal constitution. That would not have been the case, if they had started on the same lines, and worked their Party system in the same manner that the Whigs used for perhaps a century.

I could go on saying a great deal on this subject without once repeating myself. But I am aware that the patience of the Chair is not unlimited; and I know the temper of the House is not very sympathetic; and so having said my say in this matter, I would commend my proposition such as it is to the House.

Shri K. Hanumanthaiya (Mysore): Sir, I listened with great respect to Prof. Shah's argument about his amendment. I fear the new clause he has moved is completely out of tune with the constitutional structure which this House has proposed and the Drafting Committee has adumbrated. We in this House have given our approval to Parliamentary system of government, and what Prof. Shah sponsors in his amendment is, I might say, the Presidential executive. Of course, we can argue about the merits and demerits of both the systems, but we have come to accept the Parliamentary system to be suitable to this country and for very good reasons that system seems to be better adapted to conditions in India than Presidential executive. I think instead of having a conflicting trinity it is better to have a harmonious governmental structure. If we, as he says, completely separate the executive, judiciary and the legislature, conflicts are bound to arise between these three Departments of Government. In any country or in any Government, conflicts are suicidal to the peace and progress of the country. The first and foremost foundation on which a Government or society can work is peace to begin with and if there is separation—not separation but Prof. Shah wants complete separation—then conflicts are sure to arise between these three Departments of Government. Therefore, I say that in a Governmental structure it is necessary to have what is called "harmony" and not this three-fold conflict.

Then, it has become the fashion of the day with some people to decry the executive and make the judiciary look as if it is the paragon of all virtues. I would respectfully place this view before Prof. Shah and people of his way of thinking. Whereas judges no doubt are impartial and they have no sides to take, we must remember also that the executive governments in India or any where else in the world, have to work under very difficult circumstances. To carry on a government and to please people is not an easy matter. Many a time they work under difficult circumstances with danger to their lives. They will naturally incur displeasure. Some people are prone to take advantage of these conditions and displeasures to raise controversies and to decry the

executive. To continually decry the executive and the legislature and to exalt the judiciary is not doing service either to the judiciary or to the governmental structure. If I understand the term correctly, independence of the judiciary means that the executive or its officers should not interfere in the day to day administration of justice. That does not mean, as some people interpret it, that the judiciary must be the master of the executive or should be on a par with the executive government. Government in any country must govern. The powers of governing should vest with one set of people and it is unsafe for us to divide it into three equal parts and especially in the extreme degree that Prof. K. T. Shah contemplates. Even in America, though theoretically there is complete separation of powers between these three departments, we all know the party system of Government softens its rigours to a very great extent. In America there are two well organised parties and these parties determine what is to be done in their respective party meetings. At these meetings, conflicts which could have arisen between these three departments of Government, are softened, smoothened and ironed out so that the evils of this system are eliminated. Sometimes when one party has a majority in the Legislature and another in the executive, conflicts surely arise. In order to make the judiciary impartial it is unnecessary for us to exalt it to the position of the Government or the Legislature. It is wrong to argue that a few judges of the Supreme Court are better than four hundred Members of the Legislature, the duly chosen representatives of the people, or the accredited leaders of the nation. This is a topsy-turvy argument. The sooner we give up this psychology which is born of political controversies, the better. Therefore, I oppose the new clause. My main reason is that this House is wedded to a Parliamentary system of democracy and this new clause is out of place in such a constitutional structure.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I agree with my friend, Mr. Hanumanthaiya that the clause as it stands here in the amendment will not be in its proper place in the Constitution. Yet I cannot help saying that I agree to a very great extent with the reasoning advanced by my learned friend, Prof. K. T. Shah. We have experimented with Parliamentary democracy for so many years. Now I personally feel that, though Dr. Ambedkar in his original address very clearly told us that we have to choose between the British system and the American system, and said that the American system gives more security and the British system more responsibility, yet we had decided here to choose more responsibility; if it were left to his choice he would have preferred the American system. I agree to a very great extent about the evils of the present Parliamentary system. We have seen Parliamentary parties in so many provinces like in Sind, in Bengal and in other places, where Ministers try to keep their parties by giving bribes to the people who have even four or five votes so that the majority party may remain in being. I feel that this system where in people have merely to keep the majority in power is being put to abuse. I know that in England they are working the system in a perfect manner. But they have a tradition of 700 years. They have developed their methods whereas we are just entering upon our democratic freedom and we cannot imitate it to perfection. It will have to wait until the whole national character changes and it is not possible that we can imitate England. Probably our slavery has led us to imitate the British system. If left to ourselves we would have copied the American system. In that system there is complete separation of the judicature from the legislature and the legislature from the executive. The legislature there can pass any laws which it thinks best for the country and the President has to obey them. Here the Leader of the majority party must have the House with him. The House will only pass those laws which the party thinks are necessary. The legislature cannot be independent of, but it has to be submissive to, the executive. In most places where the leaders are outstanding, the parties will say "ditto" to what they say and the real will of the majority will not be voiced. Therefore I think this

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becomes more like a one-man Government than anything else. In America, people are free; they can pass laws even against the President. There have been cases where in spite of the laws passed by the legislature—the Congress—it has been set aside by the Supreme Court and the President has to see that any action of his is not against the fundamental laws of justice. The Supreme Court is far more powerful than anyone else. I, however, think that now we have gone too far to change the basis of our Constitution, because in the last two years we have passed everything in accordance with the British Constitution, and probably it is too late now in the day to change the whole system. But I do think that there is great force in what Prof. Shah has said and though this amendment is not in its proper place, still I do think that this House will remember that although we are all for a system which has been tried in England and is being worked out there in a satisfactory manner, still in our country we will have to be careful to develop traits which make that constitutional working possible. In England, they could throw out even Churchill in the new elections although he was the man who saved England and her freedom. Have we that sort of characteristic in our country where we can throw out anyone if we think he is not good enough? What is necessary for our country we must do, even though it may be against the will of the biggest person. Until then, we cannot work Parliamentary democracy. I therefore think that this amendment has given this House an opportunity to express its doubt as to whether we have done wisely in accepting the present system. But I think it is now too late in the day to change the whole system and also that this amendment has no place at this time. It should have really come as a change of the whole system. But still, I think that where the Supreme Court is concerned, I wish it were appointed by the majority in the legislature and not by one single person. Everywhere, its independence must be guaranteed and I have given amendments that the Supreme Court must be completely independent of the judicature and the legislature. It must be the one body which should decide what is guaranteed with respect to our liberty, etc. I hope this amendment will at least help us to see that the Supreme Court's independence is not in any way minimized. In regard to this I heard one of the most eminent authorities in the Assembly say "Today the High Courts are not independent; they are influenced by the political consequences of their actions".

I hope in future our Supreme Court will be free from these influences and that they will do what is necessary and observe the principles inherent in this Constitution.

Kazi Syed Karimuddin (C. P. and Berar : Muslim): Sir, I am entirely in agreement with the amendment of Prof. K. T. Shah. I know that the system approved by the Constituent Assembly is a Parliamentary system of government but even then I had urged the adoption of a non-Parliamentary system of government in India. We have seen since 1920, that the working of the Government of India Act and other Local Self-Government Acts based on the Parliamentary system of Government has demonstrated a miserable failure. In the Parliamentary system of government, it is as clear as daylight that the political opponents are practically crushed, neglected and ignored; we have no conventions and we have no discipline and it is very difficult for our people who are not trained in Parliamentary system of Government to put up with opposition in the country. What we have seen in India is this: that the Ministers are slaves of the legislature and they have to depend for their existence and for their continuance in office on the popular views of the people in the country. They cannot use their independent judgment; they cannot use their independent discretion; the result is that those who keep them in power influence the judgment and the discretion of the Ministers to the great detriment of those who are in opposition. In this country there are heterogeneous people, with different principles and with different programmes. We have seen in the

country, particularly in Noakhali, in Bihar and in the two Punjabs, arson, murders and looting. It has all happened because the Governments were based on Parliamentary system. The Ministers in both the Punjabs, in Noakhali and in Bihar did not take up a strong attitude partly because they cannot go against the popular frenzy of the people which was prevailing in Bihar, Noakhali and in the Punjab. Therefore, if you want perfect peace in the country, if you want tranquility in the country, if you want political parties or political opposition to thrive in the country, it is very necessary that there should be a non-Parliamentary system of government.

Now, it has been practically accepted on the floor of the House that the judiciary here, under the Parliamentary system of Government, can never be independent and, if it is not independent, the guaranteeing of the Fundamental Rights about personal liberty and property will be only fracical. Unless the judiciary is independent of the executive and the legislature, it is impossible to have protection under the Fundamental Rights and to have decisions which will be based on independent considerations.

My friend from Madras, while opposing this amendment gave three reasons. He said that it is impossible to create a harmonious structure in which political parties can work together in a non-Parliamentary system of Government. My submission is that under Parliamentary system, it is not a harmonious structure, but a structure in which political opponents are crushed. A harmonious structure is one in which all parties are allowed to work in a harmonious way in which the opposition is accommodated. Therefore, it cannot be said that in a Parliamentary system of Government, where there is no discipline or toleration, one can expect a harmonious structure.

Then, Sir, it was said that there would be a great conflict between the legislature, the executive and the judiciary, if there is a non-Parliamentary system of Government. My submission is that it will all be to the good if the judiciary is independent of the executive and disagrees with the excesses committed by the legislature. It would be a healthy sign in a democratic State. Then, it was said that the Ministers and the executive have to please the people. Well, that is exactly the reason why we want a non-Parliamentary system of Government. We want separation between the legislature, the executive and the judiciary only because in trying to please the people they commit such excesses that their opponents are killed, crushed, neglected and ignored. Therefore I say, the reasons advanced by my honourable Friend from Madras in favour of a Parliamentary system of Government go against him. We want a system of Government in which there is minimum pleasing of the supporters. It is wrong to say that the system of Government which exists in England alone is based on democracy. There are other systems such as the American system based on democracy. It cannot be said that the American model is not based on democracy. If you really want a stable and a strong government, if you really want communalism to die out, you must create an atmosphere in which popular frenzy will have no room and in which political opposition will be tolerated. We do not want vacillating governments and ministers who have to please their supporters for their continuance in office. Therefore I very strongly support the amendment moved by Prof. K. T. Shah.

The Honourable Shri K. Santhanam (Madras : General): Mr. Vice-President, there is no doubt that Prof. Shah has raised a question of great constitutional importance. Unfortunately, however, he is a little too late. This Assembly has already discussed the question and taken a decision in favour of Parliamentary system of Government and, on the basis of that decision, the entire Constitution has been drafted by the Drafting Committee. So, unless a revolutionary change of opinion has taken place among the majority of Members, Prof. Shah's position is hardly a practicable one at the present moment. Therefore I do not want to go in detail into this question of the Presidential

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versus parliamentary executive. I may remark, Sir, that this so-called complete separation of legislative, executive and judicial powers is, even in the American Constitution, a myth to a considerable extent. Though the Supreme Court of the United States is said to be completely separate from the executive, we have seen how President after President has tried to manipulate the Supreme Court by appointing judges to suit his own views. Whenever there has been a conflict between the President and the Supreme Court, the President has had only to wait till some judge retired and then put in his own nominee in his place and get judgments in his own favour. Therefore, so long as the President is the ultimate appointing authority, the authority of the judiciary has to some extent to be dependent on the executive. But, so far as our Constitution is concerned, it lays down that our Supreme Court will be as independent of the executive and the legislature as the Supreme Court of the United States. To that extent Prof. Shah's desires have been fulfilled in the Constitution.

Prof. Shibban Lal Saksena : There the judges are appointed by the Congress and the Senate.

The Honourable Shri K. Santhanam : Where?

Prof. Shibban Lal Saksena : In the United States of America.

The Honourable Shri K. Santhanam: But it is the President who has to nominate them.

Prof. Shibban Lal Saksena : But he has to get the consent of the Senate.

The Honourable Shri K. Santhanam: Yes; whether with the consent of the Senate or not, the appointing authority is the President. Therefore the President will give the choice only to his nominee and so, whether it is A, B, C, or D, he will nominate only those people who conform to his views, especially on the most important questions. But barring the appointing authority, so far as the independence of the judiciary, is concerned, we have provided for such independence in our Constitution as in any other Constitution. Therefore the real issue is regarding the merits of the Presidential and Parliamentary types of executive. Sir, two or three years ago I was myself strongly inclined towards the presidential type of executive for the Central Government of India, but after listening to the discussions and after further consideration, I am now convinced that it is not perhaps as desirable for the country as I once thought it was because, Sir, the future of this country is that of an economic State. If we are to be mainly a police State, certainly the separation of the executive and the legislature will be of great importance. If strength and stability are the only considerations or even the main considerations to be borne in mind in framing the Constitution of India, then I do think that there is a strong case for the presidential executive but today what is more important than stability or strength is quick economic progress. Even our stability, even our strength will be dependent upon the tempo in which the economic reconstruction of India can be proceeded with. I believe that Prof. K. T. Shah is very anxious that the Indian economy should be reconstructed on socialist lines as quickly as possible, but if there is presidential executive, I think his desires in this respect will be greatly checkmated. One of the defects of the presidential system is that the executive and the legislature may be at loggerheads very frequently. This has been the case in the United States, and when they are at loggerheads for a period of three or four years till either the legislature is renewed or the President is re-elected, the whole thing will be a deadlock. Sir, I do not think in this country we could afford to lose even a period of three or four years in such conflicts. All the advantages of the presidential executive in the form of a free hand for the President and stability for the executive will be lost even if a small period of conflict arises. Sir, we have to socialise many industries, establish new corporations, create new forms of credit, for all of

which the daily co-operation of the executive and the legislature is of the greatest importance. Unless this co-operation is forthcoming at least in the formative period of Indian freedom, then our progress which has already been delayed by the foreign rule will be further delayed and popular impatience at the delay of economic reconstruction will break all bounds and ordered democracy may become impossible. Therefore, Sir, as the Central Government is going to be vested with more powers than I had thought, as we are to be a little more unitary than federal, it is all the more essential that the executive and the Parliament at the Centre should form one integral whole and function as one unit. Unless they do so, the whole progress of the country will be delayed. If on the other hand we had trusted provincial autonomy to a far greater extent and left all constructive programmes and economic reconstruction to the units, then I would have been for responsible government in the provinces and presidential executive at the Centre, for then the Centre's business will be only to keep India safe and united and to allow the units to function in the economic sphere freely; but it has been considered desirable—and on very strong grounds—that the Central Government of India should have an active, continuous and formative part in the economic reconstruction of the whole country and for this purpose only a responsible Cabinet or the Parliamentary executive will suffice. Therefore I hope Prof. K. T. Shah will reconsider his views and withdraw his amendment. In any case, I oppose the amendment.

Mr. Vice-President : I am well aware that there are many more Members who want to speak and who are fully competent to deal with this subject, but I think that it has been discussed sufficiently. Therefore I shall call upon Dr. Ambedkar. I am sorry to disoblige honourable Members, but I think they will recognise the fact that we have to make a certain amount of progress daily.

Shri Lokanath Misra (Orissa: General): But many points have been left untouched.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General): Mr. Vice-President, Sir, this matter, as honourable Members will recall, was debated at great length when we discussed one of the articles in the Directive Principles which we have passed. It was at my instance that it was sought to incorporate in the Directive Principles an item relating to the separation of the executive and the judiciary. Originally the proposition contained a time limit of three years. Subsequently as a result of discussion and as a result of pointing out all the difficulties of giving effect to that principle, the House decided to delete the time limit and to put a sort of positive imposition upon the provincial governments to take steps to separate the executive from the judiciary. On that occasion, all this matter was gone into and I do not think that there is any necessity for me to repeat what I said there. There is no dispute whatsoever that the executive should be separated from the judiciary.

With regard to the separation of the executive from the legislature, it is true that such a separation does exist in the Constitution of the United States; but if my friend, Prof. Shah, had read some of the recent criticisms of that particular provision of the Constitution of the United States, he would have noticed that many Americans themselves were quite dissatisfied with the rigid separation embodied in the American Constitution between the executive and the legislature. One of the proposals which has been made by many students of the American Constitution is to obviate and to do away with the separation between the executive and the judiciary completely so as to bring the position in America on the same level with the position as it exists, for instance, in the U. K. In the U. K. there is no differentiation or separation between the executive and the legislature. It is advocated that a provision ought to be made in the Constitution of the United States whereby the members of the Executive shall be entitled to sit in the House of Representatives

[The Honourable Dr. B. R. Ambedkar]

or the Senate, if not for all the purposes of the legislature such as taking part in the voting, at least to sit there and to answer questions and to take part in the legal proceedings of debate and discussion of any particular measure that may be before the House. In view of that, it will be realised that the Americans themselves have begun to feel a great deal of doubt with regard to the advantage of a complete separation between the Executive and the Legislature. There is not the slightest doubt in my mind and in the minds of many students of political science, that the work of Parliament is so complicated, so vast that unless and until the Members of the Legislature receive direct guidance and initiative from the members of the Executive, sitting in Parliament, it would be very difficult for Members of Parliament to carry on the work of the Legislature. The functioning of the members of the Executive along with Members of Parliament in a debate on legislative measures has undoubtedly this advantage, that the Members of the Legislature can receive the necessary guidance on complicated matters and I personally therefore, do not think that there is any very great loss that is likely to occur if we do not adopt the American method of separating the executive from the Legislature.

With regard to the question of separating the Executive from the Judiciary, as I said, there is no difference of opinion and that proposition, in my judgment, does not depend at all on the question whether we have a presidential form of government or a Parliamentary form of government, because even under the Parliamentary form of Government the separation of the judiciary from the Executive is an accepted proposition, to which we ourselves are committed by the article that we have passed, and which is now forming part of the Directive Principles. I, therefore, think that it is not possible for me to accept this amendment.

Mr. Vice-President : I shall now put the amendment of Prof. K. T. Shah to vote.

Prof. K. T. Shah: Can I speak a few words in reply, Sir? This is a new article, and not an amendment.

Mr. Vice-President : Though it may be an article, it is an amendment to the Draft Constitution. This would create a very awkward situation. We have established a convention after a good deal of difficulty, and I am quite sure Prof. Shah would realize the difficulties of the Chair.

(Prof. Shah resumed his seat.)

Mr. Vice-President : Thank you. You are most reasonable and helpful.

The question is:—

"That after article 40, the following new article be inserted:

'40-A. There shall be complete separation of powers as between the principal organs of the State, *viz*., the Legislative, the Executive, and the Judicial.' "

The motion was negatived.

Mr. Vice-President : So far as I remember, our work commences with amendment No. 1033. This is disallowed as a formal amendment.

Amendment No. 1034 is I think blocked in view of the fact that a new article—39-A—has been already accepted by the House.

Then we come to article 41.

Article 41

Mr. Vice-President : After going through the amendments one by one, I find that amendment Nos. 1037, 1038 and 1039 are mainly concerned with the name our Motherland would bear. I think they ought to be held over for

the present. That pertains to article 1, the consideration of which we have postponed for the time being.

The Honourable Shri K. Santhanam: I want to know whether it is your ruling that these amendments are not relevant to these articles. If you decide to keep them over, then we cannot pass that article.

Mr. Vice-President : You are a pundit in these technicalities. Could we not transfer them to article 1 by some device or other, so that we could pass this article?

The Honourable Shri K. Santhanam: If the name is changed in article 1, the consequential changes will be made. These amendments may be ruled out for the present and may be taken up when you take up article 1.

Shri H. V. Kamath (C. P. & Berar : General): I did not hear a word of what the honourable Member said.

Mr. Vice-President : Mr. Santhanam, please come to the mike and explain the position. Please do not get impatient, Mr. Kamath.

Shri H. V. Kamath : We are impatient to hear him, Sir.

The Honourable Shri K. Santhanam: When we take a decision regarding the names to be used, even if we take a decision either in the title or in article 1, the consequential changes will be made throughout the Constitution. Therefore, I do not see any necessity that we should take it up at every point. If you want to pass this article, then all these things will have to be treated as not relevant to this particular article. Otherwise, every such article will be held up and these amendments would be kept pending and so long as they are not disposed of, we cannot pass the article. Therefore, I suggest that all such amendments should be taken as not pertaining to any particular article, but pertaining to the general Constitution.

Mr. Vice-President : I think that for practical reasons, we should adopt the procedure suggested by Mr. Santhanam.

Then we come to amendment No. 1035. This deals not only with the future name of our motherland, but is also concerned with the salary of the President. So it is ruled out.

Prof. K. T. Shah : Sir, I beg to move:—

"That for article 41, the following be substituted:—

'41. The Chief Executive and Head of the State in the Union of India shall be called the President of India.' "

I do not read the alternative, and I shall confine myself only to the main proposition.

In the title of the President, instead of the clause giving it barely as it stands, I should like that there be some indication of the status and power of the President. There shall be a President of India whose position and title should be made a little more clear and definite than it is at present. I therefore, describe him as "the Chief Executive and Head of the State".

I take it that there is no dispute regarding the status and position of the President as the Head of the State. That is, in a way different from the Head of the Government, which may be the Prime Minister or the President himself, as I had conceived it. But whether or not there is a separate head of the Government, there must be, for formal, ceremonial and solemn occasions, a representative of the people collectively embodying the sovereignty of the whole people and of the State as a whole. As such, I think, it would be better if my amendment is substituted for the original article, and the President is also described as the Chief Executive and Head of the State in the Union of India, called the President of India. I do not think I need take the time of the House

[Prof. K. T. Shah]

by dilating upon this, because all that I can say would be a verbal expansion of the idea so briefly put forward in this amendment. Therefore, without taking further time, I commend it to the House.

Mr. Vice-President : You do not move the second part?

Prof. K. T. Shah : I do not move the second part.

Mr. Vice-President : Amendment No. 1037 has been ruled out for reasons already known to the House. Amendment No. 1038 has also been ruled out.

(Amendment No. 1039 was not moved.)

The article is now open for general discussion, although I do not think there is any need for it.

Shri Mahavir Tyagi: (United Provinces : General): Sir, I do not want to take up much of the time of the House; but since I have not taken any for the last week or more, I think I deserve taking a minute.

My only point is to emphasise the amendment tabled by Prof. K. T. Shah which points out a direction which is very important from the point of view of a discussion on the floor of this House. There is a lack in the constitution. He has rightly pointed out—I do not know whether this is the proper place to mention this idea—that we must define as to who is the representative of the people so far as sovereignty is concerned. He says: "the Head of the State in India represents the sovereignty of the people." We have not yet decided the question of the residence of sovereignty. I had moved an amendment on this point and it was promised that it would be taken up for consideration when we discuss the Preamble to the Constitution. I am waiting for that opportunity. Sir. But, I feel that the Head of the State must also represent the sovereignty of the people. After all, how otherwise will the people express themselves? No Government in democratic countries can ever claim to be fully representative of the people as a whole. The Government here, although they represent the ambitions and aspirations of the people, and even though they are the most popular people in the country, it cannot be said that they are the representatives of the total population of India; they are not the representatives of the whole people because they have a party bias and a party manifesto on which they have been elected. The Government must as a rule represent the majority party in the country. A Government cannot therefore be the true spokesman of the whole people. There must be some unit, some authority, some person in whom paramountcy or sovereignty should be vested, in whom the prerogatives of the people should be vested. I therefore submit, Sir, that it would have been a good idea if we had laid down that the President was not only the Executive Head of the State but also a symbol of the sovereignty of the people.

Sir, I want to make a distinction between people and the State. The State has always the bias of administration. In the problem of the governed and the governor, whether it be democracy or any other cracy, the State governs and the people are governed. It is therefore necessary that in a democratic State full chance of expression should be given to the minorities or opposition. Because, when the minorities speak in a House of Legislature or in a Parliament, they speak purely with the bias of the people. In this House, as it is, if it were sitting as Legislative Assembly—we are now the Constituent Assembly—Dr. Ambedkar and his colleagues would always represent the bias of the administration. They know the difficulties of administration; but the people want their own bias to be expressed irrespective of what the administrative difficulties are. Such expressions and demands always come through the mouthpiece of the opposition, which has to be protected against the majority rule.

Mr. Vice-President : Will you kindly explain how the question of the President comes in here?

Shri Mahavir Tyagi : I want to emphasise that it is an essential requirement of the Constitution that the sovereignty of the people must also be vested in some person or somebody other than the Government. I only want to press the argument that the Government, however popular it may be, cannot claim to be sovereign. It would have been a good idea if the President were made a symbol of the people's will so that he could command respect and devotion from all alike. He could then stand between the people and the Government. In that case he would have the capacity not only of being the Executive Head, but also of being the representative of the sovereignty of the people so that in him the minorities also could find their reflection and protection. Sovereignty lies in the people; but how will it express itself? It cannot be expressed by the Government, because the Government is not the total people. Sometimes, it may be majority of only fifty one per cent and it may also be possible that a forty-nine per cent minority may go unrepresented altogether. If the House agrees to vest the paramountcy and all prerogative and sovereignty in the people, then there must be some authority where from the sovereignty may flow and express itself.

The Honourable Shri K. Santhanam: On a point of information, Sir in this Constitution, Parliament is the repository of the sovereignty of the people. That is the scheme of all constitutions where we have the Parliamentary executive.

Shri Mahavir Tyagi: My friend has taken me aback; I cannot immediately reply to his argument. But, I feel that sovereignty will not be represented by the Parliament because the Parliament also included the Council of States. I must submit that the Council of States is not representative of the people because as envisaged here, the Council of States will be the representative only of the majority parties in the provinces. That House will not come through the single transferable vote system of proportional representation; it will be a House of the States and the members thereof must represent the various States which in turn are again the representatives of the majority party. In these circumstances, the members of the Upper House will be representatives of their Governments and not of the people. There are to be 250 members of the Council of States. They will always be biassed by the difficulties of Governments in the various States. They will come here to represent their Governmental difficulties and to poise their demands from the point of view of their Governments. I submit.....

Shri T. T. Krishnamachari: (Madras: General): They will also be elected by the majority party.

Mr. Vice-President : Instead of being floored.....

Shri Mahavir Tyagi: I cannot be floored.

Mr. Vice-President : Instead of being floored.....

Shri Mahavir Tyagi: I am in possession of the floor myself.

Mr. Vice-President : Instead of being floored, will it not be better if you reserve these observations to the proper time?

Shri Mahavir Tyagi: I am aware of your anxiety to finish the discussion early. Sir, my friend Mr. T. T. Krishnamachari says that as the members of the Council of States will also be elected by the elected representatives of the people, they will represent the people. I claim they will not. For instance I have been elected by the people in my province as an M.C.A. but if I am deputed to be on the Public Service Commission, certainly in the Commission I shall act purely as a member of the Commission; I will not use my capacity as a representative. Likewise, when you elect members to the Council of

[Shri Mahavir Tyagi]

States, they cannot use their representativeship of the people, they will represent their respective States. They are deputed to represent the Governments. I therefore submit that the Parliament will not be so ideal a representative of people's sovereignty, as the Parliament will always be run by the majority party. If those who are governed cannot express themselves direct, then let their mouth-piece—the President—speak for them and let him guard the interest of the minorities and also of the people as a whole. I submit, Sir, it is a question which warrants deep consideration. I therefore hope that the House will give due consideration to the suggestion made.

Shri H. V. Kamath : Mr. Vice-President, this article 41 shares the honour with article 1 as being the shortest article in the Constitution. This is a seven-word article and there need not be much discussion on this very short article. I do not therefore propose to dilate upon the doctrine of Sovereignty which has been adumbrated by my friend Professor Shah and further adverted to by my friend Mr. Tyagi. I want, Sir, by your leave, to draw the attention of the House to the manner in which this article as it was adopted by this Assembly last year in August 1947 has been sought to be modified in the Draft Constitution. I hope, Sir, Dr. Ambedkar is paying attention. I wish to draw his attention to the modification that has been made in the article after it was adopted last year by this Assembly. I do not know what reasons the wise men of the Drafting Committee had to make such an alteration in this article. I have got the Reports of Committees—First Series and Second Series—both agree so far as the wording of this article is concerned. The original draft presented by the Committee over which Pandit Jawaharlal Nehru presided and of which Committee, I think, Dr. Ambedkar too was a member, of the Union Constitution Committee,—that report was presented by Pandit Jawaharlal Nehru on the 4th July 1947 and considered by the Assembly and adopted partly by this Assembly sometime in August 1947. If Dr. Ambedkar turns to this Report as adopted by the Assembly, he will see that the article corresponding to article 41 reads as follows:—

"The Head of the Federation shall be the President (Rashtrapati)."

Now in the draft the article has been modified to read as follows:—

"There shall be a President of India." On the Committee which presented this report to the Assembly last year, not merely Dr. Ambedkar but along with him some of the wise men of the Drafting Committee—the majority of the wise men—were on the Committee. I think only Mr. Madhava Rao and Mr. Khaitan were not on the Union Constitution Committee. The others were all present in the Committee and they have not appended a minute or a note of dissent to the Report of the Constitution Committee presented by the Committee to the Assembly. I want to know from Dr. Ambedkar why this word 'Rashtrapati' has been deleted from the article which appears in the Draft Constitution today. Is it because, Sir, that we have now developed—latterly developed, cultivated a dislike—a new-fangled dislike of some Indian or Hindi words and try to avoid them as far as possible in the English draft of the Constitution? I have not in mind the word 'Pradesh'; but certainly we have adopted words like 'beggar' and 'panchayat'. I wonder how many Britishers, how many Anglo-Americans know the words 'beggar' and 'panchayat'—except those Britishers who have served in India. I therefore want to know the reason which actuated Dr. Ambedkar and the wise men of the Drafting Committee to delete this word 'Rashtrapati' from this article as it has been presented to the Assembly. Is the reason this, that title or that name or designation, that appellation should be reserved exclusively for the Congress President. President of the Congress Organization which functions today, and perhaps will function even after this new Constitution has come into force? The argument may be advanced that the word 'Rashtrapati' is not

much in vogue, has not been in vogue in India for many years. I do not know whether Dr. Ambedkar has been very familiar or acquainted with this title or word 'Rashtrapati' during the last twenty-five years. During the last two generations, however, the word 'Rashtrapati' has gained common currency, has been in vogue to describe the person who is the Head of the Congress Organization, meaning the Head of the Nation. Or is it because that the wise men of the Drafting Committee when they shook themselves free of certain shackles—because when they were members of the Constitution Committee, Pandit Nehru was there who had been Rashtrapati himself but when they shook themselves free from the shackles of other members like Nehru, they get together as seven members of the Drafting Committee, did they think that this word 'Rashtrapati' is not very pleasant or well-sounding or is it because in their heart of hearts they did not have really much regard for this word apart from the person who used to be the Rashtrapati in former times?

Mr. Vice-President : You need not give the reasons for Dr. Ambedkar's action.

Shri H. V. Kamath: I just wanted to put forward the reasons that might have actuated Dr. Ambedkar and put forward my own point of view. So I would like to know from Dr. Ambedkar, in view of the article as passed by the Assembly last year unanimously, why he and his colleagues of the Drafting Committee have sought to delete this word 'Rashtrapati' from the article as it appears in the Draft Constitution.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, before I take up the points raised by Prof. K. T. Shah in moving his amendment, I would like to dispose of what I might say, a minor criticism which was made by Mr. Kamath. Mr. Kamath took the Drafting Committee to task for having without any warrant altered the language of the report made by the committee dealing with the Union Constitution. If I understood him correctly, he accused the Drafting Committee for having dropped the word "Rashtrapati" which is included in the brackets after the word President, in paragraph 1 of that committee's report. Now, Sir, this action of the Drafting Committee has nothing to do with any kind of prejudice against the word "Rashtrapati" or against using any Hindi term in the Constitution. The reason why we omitted it is this. We were told that simultaneously with the Drafting Committee, the President of the Constituent Assembly had appointed another committee, or rather two committees, to draft the constitution in Hindi as well as in Hindustani. We, therefore, felt that since there was to be a Draft of the Constitution in Hindi and another in Hindustani, it might be as well that we should leave this word "Rashtrapati" to be adopted by the members of those committees, as the word "Rashtrapati" was not an English term and we were drafting the Constitution in English. Now my friend asked me whether I was not aware of the fact that this term "Rashtrapati" has been in current use for a number of years in the Congress parlance. I know it is quite true and I have read it in many places that this word "Rashtrapati" is used, there is no doubt about it. But whether it has become a technical term, I am not quite sure. Therefore before rising to reply, I just thought of consulting the two Draft Constitutions, one prepared in Hindi and the other prepared in Hindustani. Now, I should like to draw the attention of my friend Mr. Kamath to the language that has been used by these two committees. I am reading from the draft in Hindustani, and it says:—

"HIND KA EK PRESIDENT HOGA....."

The word "Rashtrapati" is not used there.

Then, taking the draft prepared by the Hindi Committee, in article 41 there, the word used is प्रधान (PRADHAN). There is no "Rashtrapati" there either.

Shri H. V. Kamath: But, Sir, the point I raised was that the article as adopted by this House had word "Rashtrapati" incorporated in it. The reports of the Hindi or Hindustani Committees are not before the House, and all that I wanted was that this word should find a place in the Draft Constitution now being considered here.

The Honourable Dr. B. R. Ambedkar : And I am just now informed that in the Urdu Draft, the word used is "Sardar". *(Laughter).*

Now, Sir, I come to the question which has been raised substantially by the amendment of Prof. K. T. Shah. His amendment, if I understood him correctly, is fundamentally different from the whole scheme as has been adopted in this Draft Constitution. Prof. K. T. Shah uses the word "Chief Executive and the Head of the State". I have no doubt about it that what he means by the introduction of these words is to introduce the American presidential form of executive and not the Parliamentary form of executive which is contained in this Draft Constitution. If my friend Prof. Shah were to turn to the report of the Union Constitution Committee, he will see that the Drafting Committee has followed the proposals set out in the report of that Committee. The report of that Committee says that while the President is to be the head of the executive, he is to be guided by a Council of Ministers whose advice shall be binding upon him in all actions that he is supposed to take under the power given to him by the Constitution. He is not to be the absolute supreme head, uncontrolled by the advice of anybody, and that is the Parliamentary form of government in the United States. Undoubtedly, there are various Secretaries of State in charge of the various departments of the administration of the United States, and they carry on the administration, and I have no doubt about it, that they can also and do as a matter of fact, tender advice to the President with regard to matters arising under their administration. All the same, in theory, the President is not bound to accept the advice of the Secretaries of State. That is why the United States President is described as the Chief Head of the Executive. We have not adopted that system. We have adopted the Parliamentary system, and therefore my submission at this stage is that this matter which has been raised by Prof. K. T. Shah cannot really be disposed of unless we first dispose of article 61 of the Draft Constitution which makes it obligatory upon the President to act upon the advice of the Council of Ministers. Do we want to say it or not, that the President shall be bound by the advice of his Ministers? That is the whole question. If we decide that the President shall not be bound by the advice of the Council of Ministers, then, of course, it would be possible for this House to accept the amendment of Prof. K. T. Shah. But my submission is that at this stage, the matter is absolutely premature. If we accept the deletion of article 61 then I agree that we would be in a position to make such consequential changes as to bring it into line with the suggestion of Prof. Shah. But at this moment, I am quite certain that it is premature and should not be considered.

Mr. Vice-President : I am now going to put the amendment to vote, amendment No. 1036, first part, standing in the name of Prof. K. T. Shah. The question is:

"That for article 41, the following be substituted:—

'The Chief Executive and Head of the State in the Union of India shall be called the President of India.' "

The motion was negatived.

Mr. Vice-President : The article will now be put.

The question is:

"That article 41 stand part of the Constitution".

The motion was adopted.

Article 41 was added to the Constitution.

Article 42

Mr. Vice-President : The motion before the House is:

"That article 42 form part of the Constitution."

Shri H.V. Kamath: On a point of order, this article 42 is out of place. The order should have been "The President and his election"—the articles relating to this matter should have come first, and "Powers of the President" should have come after the election of the President. My authority for this is the report of the Union Constitution Committee which the Assembly adopted last year. I should therefore think that this article 42 must be considered after article 43.

Mr. Vice-President : This matter can be mentioned when we come to the third reading of the Constitution.

Shri H. V. Kamath : But this should be noted by the Drafting Committee.

Mr. Vice-President : I see Dr. Ambedkar's pencil moving rapidly.

Now, to take up the amendments: Nos. 1043 and 1049 are disallowed as being verbal. Amendment No. 1040 by Prof. K.T. Shah.

Prof. K. T. Shah : Mr. Vice-President, I beg to move—

"That for clause (1) of article 42, the following be substituted:

'(1) The sovereign executive power and authority of the Union shall be vested in the President, and shall be exercised by him in accordance with the Constitution and in accordance with the laws made thereunder and in force for the time being'."

or alternatively,

"(1) The executive authority, power and functions of Government shall be vested in the President and shall be exercised by him in accordance with the Constitution and the law with the advice and help of such ministers, officers or servants of the State as may be deemed necessary by him."

Before explaining the difference that there is between two alternative forms of the same idea, I should like to point out, if I may, that the argument which has been urged by the Chairman of the Drafting Committee about the appropriate place of any amendment or alteration suggested in this House is a little out of place itself. The reason is that after all this is an order settled by the Drafting Committee, and we can only give amendments on the order as it is.

An argument was also urged that if—and I agree with it—we go on holding over amendments and articles, their mutual correlation may be forgotten or overlooked; and therefore, it would be safest perhaps, and in the best interests of a full discussion, that a definite order is established. We submit most cheerfully to the suggestion you gave, at the very outset of the debate on an article that some stated amendments would be taken up and in the stated order.

That is a perfectly reasonable and proper thing to do but when an amendment or article is placed before the House, and then suddenly a surprise is sprung upon Members that this is out of place or out of time, I think it is somewhat unfair. Let those who are responsible for drafting make up their mind in what order they will take Chapter by Chapter, and we can understand that and shall co-operate. The idea that we will, in the middle of discussions, switch over from one article to another or one section to another, makes it, I submit in all humility, a little difficult for those who are responsible for a number of amendments to keep track, and to marshal their own arguments. One comes prepared for a particular set of articles; and one is suddenly told that they are not to be taken up or that it is not their place and so on. However much one may carry one's own argument in one's head, one feels a little upset to be asked all of a sudden to make up one's mind whether this thing is to be moved or not to be moved.

[Prof. K. T. Shah]

Secondly, having moved, the argument or suggestion that this is not the proper place etc. and that a given amendment be taken after another article has been dealt with is, again I submit, a little difficult for members, because it might, so to say, pre-judge the main issue. If you hold it over and get to the later article....

Mr. Vice-President : Are you not moving my amendment, Prof. Shah?

Prof. K. T. Shah : I am placing my difficulty, because the same argument may be used here again that this is out of place. That is why I am replying to it. I am very much afraid having heard this line of reasoning—I do not say that the reasoning is false—I am only saying that it makes it difficult for us to put forward, in the only way in which we can put forward, the amendments, namely, according to the order prescribed or given in the book.

Having said this, I would like to point out quite frankly that naturally all my amendments hang together, and that they arise out of a certain view of the Constitution, out of a certain view of the distribution of powers, of finances etc. which may not be accepted; but which nevertheless is a possible, a known alternative way of doing it.

I have, therefore, brought forward this amendment. I trust it will be examined or dealt with on its merits, and not merely on the ground that it is out of place or it cannot now be discussed. I venture to submit that even if the basic principle is other than I thought would be acceptable to the House, even then, on a point like this, *viz.,* the powers and place of the President may be considered quite irrespective of the governing or basic principle; and if adopted, can be fitted in even in the scheme of the Constitution which you have accepted.

I would, therefore, suggest that the powers and functions of the President should have the place as if they are the powers and functions of the sovereign people being exercised by the Chief Executive of the State. He will be the Chief Executive, I take it, for the time that he is in office, just as the King of England is the Chief Executive, even though the powers are not so thoroughly separated in the British Constitution as they are in the American Constitution.

I, therefore, put forward this point No. 1 that it would be no answer to, to my amendment to say that it is not in harmony with the basic principle of this Constitution namely, that of the Parliamentary Government, and not of the Presidential kind and as such it need not be discussed. I submit that it can be very well fitted in even in the terminology I have used with the basic idea of the Constitution that you have accepted, even though I am free to admit my own conception was slightly different.

To proceed, Sir, I would like the President's powers to be very clearly defined, and be exercisable in accordance with the Constitution. I take it there is no question on that. No one will say that the President is supra-Constitution. The President is a creature of the Constitution, and must work under the Constitution. No further words are, therefore, necessary to explain that emphasis which should be—in fact, it is there—in the main clause 2.

The next point is that it must be in accordance with the laws made thereunder. Now, in a variety of articles you have given power to Parliament to make laws. If the laws are made under the Constitution, which allow or explain or expand the powers given to the several organs of Government, then it is quite in order to suggest that they should be in accordance with the laws made thereunder.

Last comes advice,—the advice of the Ministers, officers and servants of the Union. I think that also is important to include in the position of the President as it is. Later on I have tried to elaborate this point in a subsequent amendment which I shall deal with when I come to it.

In this case, however, because I want that my suggestion should not be merely thrown overboard because it is inconsistent with the basic principle adopted in drafting this Constitution, I have tried to harmonise the Ministerial responsibility—I mean the doctrine of Ministerial responsibility—with also the position of the President as the head of the State and Chief Executive. I once more take the analogy of the King of England, who has to act on the advice of the Ministers. At least that is the constitutional position. Every Act begins: "let it be enacted by the King's Most Excellent Majesty, with the advice of the Lords Spiritual and Temporal and the Commons". Every action is the action of His Majesty in each particular matter as advised by the particular Minister. The whole doctrine that "the King can do no wrong" loses its import if the doctrine of ministerial advice and ministerial responsibility is not there. I have, therefore, laid it down, by this amendment, that the President must act in accordance with the Constitution and in accordance with the laws made therein and according to the advice of his ministers.

The addition of the "officers and servants of State" I have felt also necessary to be quite clearly expressed in the Constitution. The President should be entitled not merely to listen to all that the Minister alone says to him; he must have power to consult any other expert, or any other officer, or servant of the State in India who may give him his views. It was, of course, the custom of the regime preceding the present that the Secretaries, for example, of Departments had direct access to the head of the Government, along with or independent of the Member-in-charge of a Government Department. And though I am not keen on restoring that principle, or that system of the Secretaries being entitled to give independent and often conflicting or opposite advice to the head of the Government, as against their Minister-in-charge, I certainly think that it would do no harm to the working of the constitutional machinery if the President is entitled, as a matter of right, to send for any expert officer, and ask his advice, say, for example, the Attorney-General, the Advocate-General, should the President have a legal doubt with regard to his own position, *vis-a-vis* his own Ministers.

He should be entitled, I submit, as head of the State and finally responsible person, to know what the expert in the department thinks. Under the Parliamentary party system it will not be his veto, he would have no right to discard the advice of his Minister. The Minister's advice will eventually prevail. But it will prevail only after the President has drawn attention, according to my conception, to the other aspects of the matter which the Minister has over looked, or ignored.

It has been said by a great constitutional writer, analysing the Constitution of England a century ago, that the functions of the King,—the permanent Executive in Britain,—is to warn, to advise and eventually to surrender. The President, in the way that I am conceiving the matter here, would have also the right to advise—not the advise from personal prejudice, but the advise from an informed expert opinion having been previously obtained, as a matter of right, to elucidate any point coming before him: and then telling his Minister concerned or the Ministry as a whole that this is the proper view. If you do not think it is proper, very well then, you are the finally responsible party and you can do as you think proper. But in the Constitution a right must be provided for the President to be able to obtain advice from the servants of the Crown.

I am not suggesting that he should be free to go outside the country for such advice. I am not suggesting that he should invite foreign experts to advise

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him. He should be entitled to seek advice from his Ministers in the first place: then from the officers and from the servants of the State. This I think is in perfect harmony even if you conceive and take this Constitution to be on the principle of Ministerial responsibility, and so perfectly proper to accept it. I, therefore, commend this motion to the House.

(Amendment No. 1041 was not moved.)

Mr. Mohd. Tahir (Bihar : Muslim) : Sir, I move:

"That in clause (1) of article 42, after the words 'and may' the words 'on behalf of the people of India' be inserted."

Now, Sir, if my amendment is accepted, the article will read as follows:

"The Executive power of the Union shall be vested in the President and may on behalf of the people of India be exercised by him in accordance with the Constitution and the law."

Article 41 which we have adopted just now gives us to understand that the President will be the head of the State. Now, Sir, a man can use his powers legally in two ways only: either in his personal capacity or on behalf of somebody else. Therefore, we have to see how the President has to exercise these powers—whether on his own behalf or on behalf of somebody else. In this connection I will draw the attention of the House to page 3 of the Government of India Act, 1935, where in we find that the Governor-General used to exercise the executive power on behalf of the then King Emperor of India: But now the ownership of this country has been transferred to none but the people of India alone. Therefore, it is necessary that all the powers that have to be exercised in this country have to be exercised on behalf of the people of India.

In this connection I will also point to article 49 of this Constitution wherein the oath has been prescribed for the President and it says that—

"I,.....do solemnly affirm that I will faithfully execute the office of President of India and will to the best of my ability preserve, protect and defend the Constitution and the law and that I will devote myself to the service and well being of the people of India."

Now, Sir, if my amendment is not accepted, article 42(1) coupled with the form of oath, will surely mean that the personality of the President is somewhat above the people of India which it is absolutely not. I submit that because the ownership of the country vests only with the people of India, all the powers that have to be exercised by the President must be exercised on behalf of the people of India alone and on behalf of none else. Therefore I hope this amendment of mine will be accepted by the House.

(Amendment No. 1044 was not moved.)

Prof. K. T. Shah : Mr. Vice-President, I move:

"That for clause (2) of article 42, the following be substituted:

'(2) Without prejudice to the generality of the foregoing provision and in accordance with this Constitution and the laws made thereunder for the time being in force, the President shall—

(a) convene or dissolve the Legislature of the Union, and place before it any proposal for legislation or for sums of money needed for the good government and efficient administration of the country, or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;

(b) have the power to assent to the laws duly passed by the Union Legislature;

(c) conduct and supervise any Referendum that may be decided upon to make to the Sovereign People in accordance with this Constitution;

(d) have the power to declare war, and make peace;

(e) be the supreme commander of all the armed forces of the Union;

(f) appoint all other executive and judicial officers, including the ministers, representatives of the Union in foreign countries as ambassadors, ministers, consuls, trade commissioners and the like; as well as the commanding officers in armed forces of the Union;

(g) do all acts, exercise all powers and discharge all authority necessary or incidental to the power and authority vested in him by and under this Constitution;

(h) have power to refuse assent to any legislative proposal passed by both Houses of Parliament; or to recommend to Parliament that any legislative proposal passed by Parliament be reconsidered for reasons stated by the President, provided that any legislative proposal duly passed by Parliament, if refused assent by the President only once; and that the same proposal if passed in an identical form by Parliament in the next following sessions of that body, shall be deemed to have been duly passed and become an Act of the Legislature, notwithstanding that the President has refused or continues to refuse to assent thereto;

(i) in every case in which the President refuses to assent to any legislative proposal duly passed by Parliament, the President shall record his reasons for refusing to assent and shall forward the reasons thus recorded to Parliament;

(j) in any case where the President, having duly submitted to Parliament, or to the People's House thereof, a legislative proposal he deems necessary for the safety of the State, its integrity or defence or to safeguard the nation's interests in a national emergency, finds that Parliament is unwilling to consider or pass that proposal, may refer such a proposal to the people of the country; and if the proposal is approved, on such reference, by a majority of not less than two-thirds of the citizens voting, it shall forthwith become a law of the land. If on such reference the proposal is not approved by the requisite majority, it shall be deemed to have been negatived, and shall be treated as void and have no effect."

Sir, this is, I admit, a somewhat lengthy amendment intended to clear and make definite the powers of the President.

Before I come to the innovations or new ideas inserted in these powers as put forward by me, may I point out one item, which perhaps the draftsmen might consider favourably, namely that in the first clause of the article it has been stated that the executive power of the Union shall be vested in the President and "may be exercised" by him in accordance with the Constitution and the law? I am not a practising lawyer, and, therefore, not be able to understand clearly the meaning of this 'may' in this connection. But, speaking only as a commonsense man, I feel that this 'may' is productive or likely to produce considerable mischief. If 'may' in an option to the President, and there is no obligation by law of the Constitution upon him to exercise the powers in accordance with the Constitution and the law thereunder, or in accordance with the advice of his Ministers, then I am afraid many powers—that is my reason for bringing in this amendment—may be exercised by him, which may not be against the written letter of the Constitution, but which in his judgment are necessary and, therefore, taking shelter under this expression 'may', he may do so.

For my part, however, I wish to leave no room for doubt; and, therefore, in a previous amendment I said 'shall' instead of 'may'. And, now, lest there be any further doubt or any margin or no-man's land, or any dubious position in which both may claim equal authority or equal powers, instead of the rather mild description which is given in article 42 (1), I have tried to explain and make clear all the 8 or 10 items, I have specifically enumerated them.

A good many of them are, of course, beyond question, such as the right to convene or dissolve Parliament. These will, of course, be done on the advice of the Ministers. So also the right to declare war or peace. This is merely a titular power, and it is also to be exercised on the advice of the Ministers. Next we have the right to assent to legislation passed by Parliament. I need not, I think, take the time of the House in explaining those conventionally adopted articles. The necessity for stating them, since you are stating them very briefly, or if I may say so, compendiously and clearly, is there, and it would be better to define and put them in full.

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I come next to the question of the right to refuse assent. It may seem as if it was an innovation of my own. I do not think it is an innovation, because, technically at any rate, in the model on which this Constitution is based or appeals to be made, *viz.* that of the United Kingdom, the King's veto is not abolished, as the veto of the House of Lords for instance is modified. There, there are a number of conventions which have for centuries past guided the ministers and the people in dealing with any exercise of royal authority whether by prerogative or otherwise which does not infringe the spirit, if not the letter of the Constitution as well.

Here, however, we are making a new Constitution, and we are starting upon a new democratic career on a very large national scale. After all, you must remember that the United Kingdom compared to India is perhaps not one-tenth or one-twelfth in size; and, in point of the population, it is perhaps one-sixth or one-fifth in strength of numbers. Therefore, what may have suited that country and its ways may not suit us. At any rate, they have a long history of precedents and conventions behind them. We have to make those precedents and conventions. I therefore submit it would be as well for us not to leave any room for doubt, and make precise and explicit the powers that we are vesting in the President.

The right to give assent carries with it the right to refuse assent, unless you positively state that the President will not be able to refuse assent. In my amendment I have, however, laid down the conditions under which the right to refuse assent may be safeguarded. The right to refuse assent is given only once. In spite of the refusal, if Parliament proceeds with the legislation in identical form, whether or not the President agrees, it will become law. The privilege of the President, according to my amendment, only lies in his stating the reasons for refusing his assent. Being popularly elected, as I conceive it, he is bound, in his sense of true responsibility to the people, to lay before their representatives the reasons which have actuated him in refusing assent. I do not think there is anything revolutionary in making such a suggestion.

The second innovation is in regard to reference to the people, or Referendum. Now, this Constitution does not provide for reference to the people, not withstanding the fact that we talk again and again of the people's sovereignty, of the people being the ultimate sovereign of this country. Our regard for reference to the people, or consultation with the people, is expressed if at all only in a quinquennial election, a general election to Parliament. In a general election, however, so many issues are mixed up; so many cross-currents take place; so many moves and counter-moves happen that the consultation with the people, or the verdict of the people on such variety of issues is only nominal, if I may say so without any disrespect.

If you seriously, if you sincerely, if you really desire that the people shall be sovereign, if you want that the people be consulted in any emergency when your two organs of power, *viz.*, the Legislature and the Executive, are unable to agree, then the test will lie in your readiness to consult the people. It may be that the emergency may be so momentous that you cannot dissolve Parliament. It may be that the state of emergency may be such that the President cannot retire, and will not tender his resignation. Or it may be only a matter involving such strong difference of opinion that neither is prepared to yield. At that moment it is but right that the view of the people should be ascertained on the specific single issue worded so as to admit of a categorical answer, 'Yes' or 'No'.

Surely the test of this Constitution enshrining the sovereignty of the people is not merely the lip-loyalty that seems to be very common in this

Draft. The argument could be urged, and was urged by those who were against people's sovereignty in fact and in name, that the people are not ready; or that they are not educated enough to give any decisive opinion on such complicated issues of foreign or local policy. I trust that in this House, we shall not hear such an argument. Backward as we may be—only ten or twelve percent of us may be literate—whatever may be our deficiency or handicaps, I take it that we are all sincere, true in our belief that ultimately the people are sovereign. Where there is collective wisdom, there is after all real salvation. *Vox populi vox Dei*—The voice of the people is the voice of God.

That, I take it, is not merely a figure of speech, is not merely a maximum used to hypnotise children, but is intended for serious legislators to take into account and act up to it. I invite you, therefore, with all the earnestness I command to consider this matter seriously. If you think that you will take counsel together, on this amendment before giving a positive decision, here at least I am agreeable to hold over this amendment. But I beg of you with all the earnestness at my command that, if you are sincere in your desire to make the people truly sovereign, if you want them to be trained in the art of working democracy, if you desire that they shall be the final arbiters on all issues, then for goodness' sake, do not treat this with your Party label of opposition, right or wrong.

I have not conceived my role in this House as a cussed opposition, to oppose things on every ground and on any ground. I take myself to be a friendly critic, always ready to offer constructive views with such brains or such ability as I have. It may be that they do not appeal to you for one reason or another. But here is a case in which I venture to submit that, if you really believe in the sovereignty of the people, if you honestly believe that the people are the true masters of our destiny, you cannot shirk this amendment. Do not decline it on merely technical grounds of its being not in proper time or place or out of place and such other camouflage. Let me also point out that I have not omitted to put in certain conditions and safeguards, so that if and when you consult the sovereign people you will not merely have a chance decision, but the considered opinion of a real majority of our voters. In that case, even if the decision is wrong, we shall all be in the same boat. It is far better to sink with our fellows than swim with our masters.

(Amendment Nos. 1046 and 1047 were not moved.)

Mr. Vice-President : Amendment No. 1048 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I beg to move:

"That for sub-clause (a) of clause (3) of article 42, the following be substituted:

> '(a) be deemed to authorise or empower the President to exercise any power or perform any function which by any existing law is exercisable or performable by the Government of any State or by any other authority; or' "

Sir, I beg to submit that this amendment will have an effect quite contrary to some of the amendments which have been moved by Prof. K. T. Shah. It purports to limit the power of the President in this way that, if any power is specifically exercisable by any State or any local authority, the President will not be empowered to exercise those powers. In fact, I want to make the President a perfectly constitutional President. It has been pointed out that Parliamentary legislation in the United Kingdom is in the form that "Be it enacted by the King's Most Excellent Majesty on the advice of the Lords Spiritual and Temporal and the Commons in this Parliament assembled" etc. Sir, I beg to submit that this does not give the King any power. The British are an extremely conservative people. They carry on with old forms. Although the King's power is practically entirely extinct, the old form is kept up. To introduce this form here would be to give the President plenary powers to

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override the Executive and to a large extent flout the decisions of the Legislature. Therefore, I think that the powers of the President should be limited to those of a strictly Constitutional President. The amendment seeks to debar the President from exercising any powers exercisable by the Provinces or the local or other authorities. The present amendment should be considered from this point of view. I do not wish to dilate on the merits and demerits of the proposition any further. This is a view point, which, I submit, should be considered by the House.

(Amendment No. 1050 was not moved.)

Mr. Vice-President: The article is open for general discussion.

Shri R. K. Sidhwa (C.P. & Berar : General) : Mr. Vice-President, Sir, I closely followed the amendment moved by my honourable Friend, Prof. K. T. Shah, and also listened to his speech with rapt attention. I give credit for his tenacity for bringing in his view-point by various ways in this House, and to see that they are implemented by changing the very fundamentals of this Constitution from time to time. In this amendment that he has proposed, Sir, it will be seen that many of the clauses refer to the fundamental changes, and some of them, of course, could be provided in the rules and regulations to be made after the Constitution comes into force. But that apart, Sir, I will presently show to this House how some of the suggestions that he has made in this amendment may be commendable for acceptance if a different type of Constitution were to be framed, but the fact is that we have taken a decision on a democratic Parliamentary system of Government and if his proposal is accepted, it cannot fit in or suit the provisions we have provided in the Constitution.

For instance, in his amendment, Prof. Shah says: The President shall place before the Legislature of the Union 'any proposal for legislation or for sums of money needed for the good government and efficient administration of the country. He wants that the President should be empowered with those powers. I want to know, Sir, how it would fit in with an Executive responsible to the Legislature, if the power of spending of money is vested in the President. It is the very negation of the very fundamental principle that we have accepted after a long discussion of five days in the opening session of this Constituent Assembly.

Then he says; "or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;". Our Constitution has provided power to the President for emergency purposes, but may I know, Sir, in a responsible Legislature does Prof. Shah want the powers to declare war or peace to be entrusted absolutely to the President? Even in a responsible Parliamentary Government that will be certainly most objectionable. If a war has to be declared, the President will certainly have the power; he is the supreme head of Defence under our Constitution, but the House has to be taken into confidence. The Government has to consider this point. Suppose this clause is passed, and some autocrat President comes into existence and says: "I want to declare a war in view of some exigencies arising here or around our country". Would this be called a responsible Government? Absolutely not, Sir.

Then in clause (h) of his amendment he says that when both Houses of Parliament pass the bills, they go to the President. That is understandable. Again they come before the 'House and then with a certain majority he wants those bills to be passed. There may not be a very serious objection to that, but I find Sir, if his clause (i) is accepted, there would be a deadlock always between the President's action and the Parliament and if all these clauses are

finalised, it will come to nothing else, but a chaos between the Government and the President and who would like, Sir, the President being entrusted with the powers of the Executive? Certainly we do not want them.

As regards the type of Government, Sir, some of the provisions of the American type of Government may be good, but let me tell you, Sir, I have pondered over this matter as to what type of Government should be suitable to our country and I have come to the conclusion that the British Parliamentary procedure, which is really democratic, barring Soviet system of Government, is really suited to our country. Secondly, what is wrong, I ask, in the Constitutional democracy? Similarly as we are running elections on a party system, it is run on a party system in England. Prof. Shibban Lal stated "Mr. Churchill was thrown out by the electorate although he was considered to be the best man during war-time." Perfectly right. Mr. Churchill stood in the election through a party and he was considered as the best man during war and he was not accepted by the majority for peace time. Similarly it may happen in our country. We have the party system, elections, etc. I therefore contend, Sir, that the amendments which my honourable Friend Prof. Shah has given notice of may be good; he deserves credit for his trying to convert the Members of this House to his point of view. I do not dispute his sincere belief, but I must say that the House has considered that a particular type of Government is really desirable and I think, Sir, these amendments cannot fit in and would not fit in the Constitution. I do feel that some of them may be good, but the House has taken a decision on the type of Government and I therefore oppose the amendment proposed by Prof. K. T. Shah.

Shri Jagat Narain Lal (Bihar : General) : Mr. Vice-President, Sir, I would have liked very much to vote for the amendment moved by Prof. K. T. Shah, but I feel that it runs counter to the view which we have held, so far as introduction of democracy in our country is concerned. It seems clear that Prof. Shah sticks to the view that the President of the Indian Union should wield the same powers and authority as the President of the American Republic. If that is his intention, as I take it to be, I think we would all agree that we do not share that view. So far as our Constitution goes, the powers which we propose to vest in the President are the powers more or less on the lines of the Irish Republic. There are several models with regard to this. One is the latest, the power wielded by the President of the Irish Republic. So far as Great Britain is concerned, we all know that the King is a constitutional head and there is no such thing as President and he has certain powers, privileges and other conventions. The power wielded by the French President are more or less nominal. He is more of a titular head. Under the Weimar Constitution, the Chairman-President used to wield great powers, but we see that even the Chairman-President of the Reich, even he, in declaring war had to take the approval of the ministers and the Reich itself. Even in making treaties and alliances, he had to take their approval. But Prof. Shah makes a more drastic proposal. He says that even wars and treaties he can make. He does not say that in so many words, but he wants to leave it to the Constitution rather than to convention. If he makes wars or treaties, he may consult; he will, as a matter of course, consult. But he does not want to provide for that in the Constitution. Therefore, Sir, I feel it is not possible to agree with Prof. K. T. Shah. There is a fundamental difference in the view that he takes of the powers which are to be given to the President of the Indian Union. I feel he wants it to be on the American model, whereas we feel that the powers which we want to vest in the President are not to be on that model, but, I take it, more or less on the model of the powers vested in the President of the Irish Republic.

Sir, I do not want to prolong the debate; I have finished.

Shri K. M. Munshi (Bombay : General) : Mr. Vice-President, Sir, the previous speakers have already drawn attention to the fact that the amendments moved by my honourable Friend Prof. Shah not only to this article, but to the subsequent articles, create a fundamental change in the whole structure of the Constitution that this House has envisaged for the last year and a quarter. At the earlier stage of the Union Constitution Committee, it was decided, I think possibly with one or two dissident voices, that our Central Government should be based on the English model and that the American model or rather the model of the United States of America was to be rejected for two valid reasons. The two issues that have been before the House and the several Committees were these: what would make for the strongest executive consistently with a democratic constitutional structure, and the second issue is which is the form of executive which is suited to the conditions of this country. I fail to see how from any of these points of view, the amendments of my honourable Friend can find favour with this House.

Already reference has been made to an amendment moved by my honourable Friend and lost in this House about the separation of powers. It must not be forgotten that the American Constitution was made long ago, in the 18th Century. The makers were then guided by Montaigne's interpretation of the British Constitution that there was separation of powers in England. They thought that they were translating Montaigne's analysis into a constitutional structure. The powers that were given to the President in the Constitution of America were based on what is now held on all accounts to be a misreading of the British Constitution in the 18th Century.

As already pointed out by my honourable Friend Dr. Ambedkar, even in America, they have found it impossible to maintain the principle of separation of powers. We know that the Constitution in America is not working as well as the British Constitution, for the simple reason that the Chief Executive in the country is separated from the legislature. The strongest Government and the most elastic Executive have been found to be in England and that is because the executive powers vest in the Cabinet supported by a majority in the Lower House which has financial powers under the Constitution. As a result, it is the rule of the majority in the legislature; for it supports its leaders in the Cabinet: which advises the Head of the State, namely, the King or the President. The King or the President is thus placed above party. He is made really the symbol of the impartial dignity of the Constitution. The Government in England in consequence is found strong and elastic under all circumstances. The power of the Cabinet in England today is no whit less than the powers enjoyed by the President of the United States of America. By reason of the fact that the Prime Minister and the whole Cabinet are members of the legislature, the conflict between the authority wielding the executive power and the legislature is reduced to minimum; really there is none at all; because, at every moment of time, the Cabinet subsists only provided it carries with it the support of the majority in the Parliament. It is that character of the British Constitution that has enabled the British Government to tide over the many difficulties which it has had to face during the last 150 years. Therefore, between the two Executives, one on the American model and the other on the British model, there can be no question of preference. The British model has been approved by every one including leading American constitutional experts as really better fitted for modern conditions.

Apart from that, the second issue which the House has to consider is, what is the best form suited to Indian conditions. We must not forget a very important fact that during the last 100 years, the Indian public life has largely drawn upon the traditions of the British Constitutional law. Most of us, and during the last several generations before us, public men in India, have looked up to the British model as the best. For the last thirty or forty years, some

kind of responsibility has been introduced in the governance of this country. Our Constitutional traditions have become Parliamentary and we have now all our provinces functioning more or less on the British model. As a matter of fact, today, the Dominion Government of India is functioning as a full-fledged Parliamentary Government. After this experience why should we go back upon the tradition that has been built for over 100 years, and try a novel experiment which was, as I said, framed 150 years ago and which has been found wanting even in America? I, therefore, submit that from this point of view that the whole scheme put forward by the various amendments of Prof. Shah has not been accepted by the House so far, has not yielded the best possible result else where and is against the tradition which has been built up in India. Therefore, I submit, Sir, that the amendment should be rejected.

Shri Alladi Krishnaswami Ayyar (Madras: General): Mr. Vice-President, Sir, Prof. Shah's amendment, if it meets with the acceptance of the House, would mean that the House, for the reasons which Prof. Shah has assigned, is going back upon the decision reached by various Committees of this House as well as by the Constituent Assembly after considerable deliberation on previous occasions.

Apart from this question that it will involve going back upon the decision solemnly reached, there are weighty reasons why what may be called the Cabinet type of Government should be preferred in this country to what is generally known as the Presidential type of Government. In the first place the idea is to take the various units and provinces and the States into the Federation. There is at present no idea of effacing the Rulers from the various States. What are we going to do in the case of the States if you are going to have what is called the Presidential system at the Centre? Does it mean that in the States the Rulers will again be invested with real executive power and the legislatures be confined purely to their legislative functions? It will be against the marked tendency of the times. It will create insuperable difficulties in the Indian States. That is one point which may be considered.

The second thing is that so far as the provinces in India are concerned, we have been accustomed to something like the Cabinet form of Government for some years. We have got into that frame-work. Before that, Dyarchy was in force for some time. And we have been working responsible Government for some time in the different units in India. In dealing with the American Presidential system it must be remembered that the Presidential system is in vogue not merely in the Centre but in the different States in America. There is complete separation between the Legislature and the Executive, not merely in the Centre but also in the different States. It is also necessary to take into account the historic conditions under which the Presidential system was started and worked in America. The distrust of George III, the conditions under which the rebellion was started, the perpetual feud between the Parliament and the Executive and the earlier history of the Petition and the Bill of Rights, they all account to a very large extent for the Presidential system in America, apart from the theories inculcated by Montesco and other leaders of political thought as to the necessity of separation of functions between the Legislature and the Executive. Then there are obvious difficulties in the way of working the Presidential system. Unless there is some kind of close union between the legislature and the Executive, it is sure to result in a spoil system. Who is to sanction the budget? Who is to sanction particular policies? The Parliament may take one line of action and the Executive may take another line of action. An infant democracy cannot afford, under modern conditions, to take the risk of a perpetual cleavage, feudor conflict or threatened conflict between the Legislature and the Executive. The object of the present constitutional structure is to prevent a conflict between the Legislature and the Executive and to promote harmony between the different

[Shri Alladi Krishnaswami Ayyar]

parts of the Governmental system. That is the main object of a Constitution. These then, are the reasons which influenced this Assembly as well as the various Committees in adopting the Cabinet system of Government in preference to the Presidential type. It is unnecessary to grow eloquent over the Cabinet system. In the terms in which Bagehot has put it, it is a hyphen between the Legislature and the Executive. In our country under modern conditions it is necessary that there should be a close union between the legislature and the Executive in the early stages of the democratic working of the machinery. It is for these reasons that the Union Constitution Committee and this Assembly have all adopted what may be called, the Cabinet System of Government. The Presidential system has worked splendidly in America due to historic reasons. The President no doubt certainly commands very great respect but it is not merely due to the Presidential system but also to the way in which America has built up her riches. These are the reasons for which I would support the Constitution as it is and oppose the amendment of Prof. Shah.

The Honourable Dr. B. R. Ambedkar : I am sorry I cannot accept any of the amendments that have been moved. So far as the general discussion of the clause is concerned, I do not think I can usefully add anything to what my friends Mr. Munshi and Shri Alladi Krishnaswamy Ayyar have said.

Mr. Vice-President : I am putting the amendments one by one to vote. First part of No. 1040. The question is:

"That for clause (1) of article 42, the following be substituted:

'(1) The sovereign executive power and authority of the Union shall be vested in the President, and shall be exercised by him in accordance with the Constitution and in accordance with the laws made thereunder and in force for the time being.' "

The motion was negatived.

Mr. Vice-President : I put the second part of No. 1040.

The question is:

"That for clause (1) of article 42, the following be substituted:

'(1) The executive authority, power and functions of Government shall be vested in the President, and shall be exercised by him in accordance with the Constitution and the law with the advice and help of such ministers, officers or servants of the State as may be deemed necessary for him.' "

The motion was negatived.

Mr. Vice-President : I put Amendment No. 1042 to vote.

The question is:

"That in clause (1) of article 42, after the words 'and may' the words 'on behalf of the people of India' be inserted."

The motion was negatived.

Mr. Vice-President : I put amendment No. 1045.

The question is:

"That for clause (2) of article 42, the following be substituted:

'(2) Without prejudice to the generality of the foregoing provision and in accordance with this Constitution and the laws made thereunder for the time being in force, the President shall—

(a) convene or dissolve the Legislature of the Union, and place before it any proposal for legislation or for sums of money needed for the good government and

efficient administration of the country, or for its defence, or to provide for any sudden calamity in any part of the Union or any other emergency;

(b) have the power to assent to the laws duly passed by the Union Legislature;

(c) conduct and supervise any Referendum that may be decided upon to make to the Sovereign People in accordance with this Constitution;

(d) have the power to declare war, and make peace;

(e) be the supreme commander of all the armed forces of the Union;

(f) appoint all other executive and judicial officers, including the ministers, representatives of the Union in foreign countries as ambassadors, ministers, consuls, trade commissioners and the like; as well as the commanding officers in the armed forces of the Union;

(g) do all acts, exercise all powers and discharge all authority necessary or incidental to the power and authority vested in him by and under this Constitution;

(h) have power to refuse assent to any legislative proposal passed by both Houses of Parliament; or to recommend to Parliament that any legislative proposal passed by Parliament be reconsidered for reasons stated by the President, provided that any legislative proposal duly passed by Parliament, if refused assent by the President only once; and that the same proposal if passed in an identical form by Parliament in the next following sessions of that body, shall be deemed to have been duly passed and become an Act of the Legislature, notwithstanding that the President has refused or continues to refuse to assent thereto;

(i) in every case in which the President refuses to assent to any legislative proposal duly passed by Parliament, the President shall record his reasons for refusing to assent and shall forward the reasons thus recorded to Parliament;

(j) in any case where the President, having duly submitted to Parliament, or to the People's House thereof, a legislative proposal he deems necessary for the safety of the State, its integrity or defence or to safeguard the nation's interests in a national emergency, finds that Parliament is unwilling to consider or pass that proposal, may refer such a proposal to the people of the country; and if the proposal is approved, on such reference, by a majority of not less than two-thirds of the citizens voting, it shall forthwith become a law of the land. If on such reference the proposal is not approved by the requisite majority, it shall be deemed to have been negatived, and shall be treated as void and have no effect."

The motion was negatived.

Mr. Vice-President : I now put No. 1048 to vote.

The question is:

"That for sub-clause (a) of clause (3) of article 42, the following be substituted:

'(a) be deemed to authorise or empower the President to exercise any power or perform any function which by any existing law is exercisable or performable by the Government of any State or by any other authority; or' "

The motion was negatived.

Mr. Vice-President : Now the question is:

"That article 42 stand part of the Constitution."

The motion was adopted.

Article 42 was added to the Constitution.

Article 43

Mr. Vice-President : We have some 12 minutes more and I propose to go on to the next article.

The motion is:

"That article 43 form part of the Constitution."

Amendment No. 1051—Shri Damodar Swarup Seth.

Shri Damodar Swarup Seth (United Provinces : General) : Sir, I beg to move:

"That for articles 43 and 44 the following be substituted:

'The President shall be elected by means of the single transferable vote by an electoral college composed of the members of Parliament and an equal number of persons elected by the Legislatures of the States on population basis under the system of single transferable vote.' "

Sir, article 43 provides, for the election of the President of the Union of India, an electoral college composed of the members of both Houses of Parliament and elected members of the Legislatures of the States, while article 44 lays down the details of the procedure to be adopted in the elections of the representatives of the States. Now, so far as the system of proportional representation by means of the single transferable vote is concerned, I hope every honourable Member of the House will welcome it. But so far as the inclusion of members of the Council of States and the members of the Legislative Councils of the States is concerned, I am opposed to their inclusion in the election of the President. Not only that, Sir, I am opposed to the very existence of these Houses under the new Constitution. Now, Sir, bicameral legislation is no more regarded as an essential feature of the Federal polity or of a sound democratic Constitution. At best it is a conservative device to delay progress. Sir, Prof. Laski has very rightly remarked that the safeguards required for the protection of the unit of a federation do not need the armour of a second chamber. All the requisite protection to the units of a federation is secured by the terms of the original distribution of powers embodied in the Constitution, and the right to judicial review by the courts. In all federal States, Sir, the party system operates alike in both the chambers of the legislatures, and the members of the second chamber are also elected on party system. Not only that, they work and vote also under the guidance of the party in much the same way as members of their respective parties in the Lower House. The relative strength of the national parties in the two Houses is no doubt different, but this difference in the number of members of the two Houses only promotes confusion and deadlock. Neither is it wise to entrust the protection of regional and national interests to two different chambers of federal legislature; nor have second chamber justified their existence by protecting the regional and national interests. The members of both the chambers have reacted to national and regional interests in much the same way. The principle of representation of constituent units as political entities through nomination by the local executive, or election by the legislature of the units is also not accepted by modern thinkers as valid. While most of the members of the Council of State are to be elected by indirect election, some are also to be nominated. The system of nomination, Sir, is undemocratic, while that of indirect election, in the words of Prof. Laski, "is the worst system which maximises corruption." Now, Sir, as for the details of the procedure of election given in article 44, and in the foot-note to that article, I submit that it is not only complex, but very complicated, and do not ensure uniformity in the scale of representation of the State. My amendment, on the other hand, Sir, suggests a system which is very simple and can be operated without much difficulty, and does, at the same time, ensure uniformity, as desired, in the scale of representation of the State. I therefore, hope that the House would have no hesitation in accepting this amendment of mine.

(Amendment No. 1052 was not moved.)

Mr. Vice-President : There are two or three amendments of the same type and I want to know which of them is going to be pressed. They are amendment Nos. 1053, 1055, 1057, 1059 and 1062.

(Amendment Nos. 1055, 1059 and 1062 were not moved.)

Mr. Vice-President : So we have two amendments of the same type, Nos. 1053 and 1057. I can allow No. 1053 standing in the name of Prof. K. T. Shah to be moved.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That for article 43 the following be substituted:—

'43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.' "

Mr. Vice-President : You can continue your speech on Monday.

The House stands adjourned to 10 A. M. on Monday.

The Constituent Assembly then adjourned till Ten of the Clock on Monday, the 13th December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 13*th December,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—(*contd.*)

Article 43—contd.

Prof. K. T. Shah : (Bihar : General): Sir, I have moved.....

Shri T. T. Krishnamachari (Madras : General): Sir, on a point of order, may I know whether Prof. Shah can bring in again the scheme that he had outlined in one or two earlier amendments of his and which had all been negatived in this House? He is really persisting in one particular scheme in all his amendments and is the honourable Member in order in moving this amendment?

Prof. K. T. Shah: My reply to that point of order is clear. I had foreseen this objection and that is why I have worded my amendment in such a manner that this particular objection will not apply. The principle of complete separation of powers between the various organs of Government is rejected. But that does not preclude the President, even if these powers are not separated, from being elected by popular vote, whatever his powers. Unless it is intended that I shall not be allowed to move any amendment, I do not see how the objection can arise. I leave it to the Chair. I am entirely in your hands, Sir. I do not think that the honourable Member's arguments can apply at all. It was because of this that I have worded each of my amendments in such a way that risking the possibility.....

Mr. Vice-President (Dr. H. C. Mookherjee): Prof. Shah is in order.

Prof. K. T. Shah : Sir, I have moved already:

"That for article 43, the following be substituted:—

'43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.' "

The original article provides for the election of the President by an electoral college consisting of the members of the Central Legislature as well as those of the Provincial or States legislatures. That I think is not sufficiently representative of the people's will; and as such I at least am persistent enough to insist upon the people's will being always held supreme.

I have felt it necessary, even apart from any other scheme, that at every point, wherever I can help it, the sovereign people shall come in, whether you like it or not, and that the people's will be asserted, whether you like it or not. It is therefore I suggest that every adult citizen shall have his share in electing the head of the State; and accordingly, instead of indirect election through the representatives of the legislatures which may be elected after two, three or four years interval, I would suggest that every time a presidential election takes place, that election shall be by the votes of the people themselves.

I will give you both positive or negative arguments for this amendment. I have been accustomed to this kind of suggestion that, either my amendment is not in proper time, or this is not the proper place for it, or the third dimensional argument,— "I oppose it." These are the three—dimensional answers to my arguments. In reply I hold that this is the only time and the only place where I can bring forward this particular amendment; and as for opposition without reason I am of course sufficiently reasonable not to take notice of it.

[Prof. K. T. Shah]

The point I wanted to make is this. On a previous occasion it was suggested that the principle having been settled, it is brought up in another shape today, and so this amendment should not be taken up. I put it to you, Sir, and through you to the House, that even if one had put up this idea at the time that the general principles of the Constitution were considered, I would invite the House dispassionately to consider the point I am making now, namely that 14 or 15 months ago, when we decided upon what are called the leading principles, and nothing more than the leading principles, we were under a stress and strain, and were passing through difficult circumstances and were under influences, which, I venture to submit, deflected our judgment, unbalanced our outlook, and, therefore, we voted for and accepted ideas, which, in my opinion, were not then, and are not consistent with the idea of a true, real, working democracy, in every sphere of life. If you wish to go back on it I have nothing more to say. After 15 months we are now in a position to take a more sober, balanced, and impartial view of the situation. As such if we are true to our ideals, if we are true to the principles which we have proclaimed from the house-top, if we are true to the slogans on which we asked the old Imperialist regime to quit and yield place to the children of the soil, I put it to you, Sir, that there is nothing improper, there is nothing out of the way for me to put before the House this amendment. It is after all for the House to judge. I only want to submit to the House the considerations on which it can accept my point of view.

If the Draft before us is treated on the ground that it is something like the report of a Select Committee on a Bill coming before the House, I still say that at that stage any member would be entitled to have his say even on that ground. As I have read the rules, even at the stage of a Select Committee Report before the House, a Member can say that the entire report be sent back for reasons arising out of it, without questioning the principle of the Bill, and, in this case, of the Draft.

Thirdly, after all, the principles that you have accepted, as I have understood them, are the principles contained in the Objectives Resolution; and nothing that I am saying here involves going back upon that Resolution. The Objective principle assures us that ours is a democratic, secular, sovereign republic. That is in no way questioned by my amendment. For the rest they are matters of detail.

Having given you these three reasons against the objection that this is not the time nor the place. I would now pass on to say that, positively considered, the President, whether you make his term three, four or five years, will be, during that period, unless he is guilty of any offence for which he can be impeached and removed, the head, not only of the Government even under your scheme, but will also embody the sovereignty of the people, as Mr. Tyagi pointed out in this House the other day.

And as representing the sovereignty of the people, in their collective capacity, at home and abroad, he must be in a position to command the confidence of the people, be they majority or minority. And I at least hold the view that the President, once elected, ceases to be a party man even as the President of this House is. So I have only suggested that the President will be the President of the whole Indian Union, who will be equally respected, equally reverenced and obeyed by every citizen, no matter whether he voted for him or not at the time of the election.

Thinking in these terms I hold that we should arm the President with the authority to say that he represents the people. It is no use telling him that there may be conflict between the Prime Minister, or the majority party in

the House, and the President elected by the people. Such a conflict need not arise. The President will function only in an emergency; he will function, not ornamentally only, but in a representative capacity with the representatives of other countries. Accordingly this sort of argument would seem to be puerile namely, that you want the President to be a sort of mere gramophone of the Prime Minister. I do not want the President to be anything but the head of the State and representative of the people in their collective capacity and in their sovereignty. For this reason I hold that the President, not being a creature of party majorities in the Centre or the local legislatures but a real representative of the people, and one elected to function as the head of the State and as its representative, this fact is a conclusive argument.

In this view I may say that the possibilities of conflict between the Ministry and the head of the State, or other difficulties are, in my opinion, matters of detail, which, given good sense, given loyalty to the central theme of this constitution, given sincerity amongst you the makers of the Constitution, may be easily solved. I take the view that you will do very well to have the President elected by the adult vote, instead of by an indirect round about method. After all your Parliament is liable to be dissolved at any time. Though a maximum term of four or five years for the People's House, is provided, there is also provision for its dissolution at any time. The local Legislatures in the States may also be dissolved. The President on the other hand will be elected for a definite period. As such he will be outside the turmoil of party passion, will be outside the momentary ups and downs—the vicissitudes of Parliamentary fortunes; and will be much more likely to maintain balance, and to give a degree of stability to our Government which it may not have under party passions. Accordingly I commend this amendment and I trust it would be considered on its merits, and not on mere pettifogging points of order.

(Amendment Nos. 1054, 1061, 1067 were not moved.)

Mr. Vice-President : Amendment Nos. 1056, 1058, 1060 and 1068 are all of similar import, and can be taken together.

(Amendment Nos. 1058, 1056, and 1060 were not moved.)

Mr. Mohd. Tahir (Bihar: Muslim): Mr. Vice-President, Sir, I beg to move:

"That in clause (b) of article 43, the word 'elected' be deleted."

In this article we are going to form the electoral college for the election of the President. It has been said that the President shall be elected by members of an electoral college consisting of (a) the members of both Houses of Parliament and (b) the elected members of the Legislatures of the States. I want that the word 'elected' in (b) should be deleted. My reasons for doing so are these. In the election of the President are we going to be more democratic or are we going to be guided by some sort of imperialistic ideas? If we delete the word 'elected' I assure the House that we will be more democratic in this respect, because members of either House—they are elected or nominated—but the members as such must have equal rights and privileges so far as the business of the Legislature is concerned. Therefore it appears to be very improper that there should be a distinction between members and members. Whether a member is elected or is nominated he must have equal rights and privileges so far as the voting for the President is concerned. In this way I think we will be more democratic in our action. Therefore I submit that the amendment which I have moved may be duly considered by the House as well as by the honourable Mover and accepted. With these words I move.

Mr. Tajamul Husain (Bihar : Muslim): Mr. Vice-President, Sir, I beg to move:

"That in clause (a) of article 43, for the words 'the members' the words 'the elected members' be substituted."

I shall read article 43. It says: "The President shall be elected by the members of an electoral college consisting of (a) the members of both Houses of Parliament, and (b) the elected members of the Legislatures of the States". Clause (a) says that the President shall be elected by the members of both the Houses of Parliament. The Upper House has got nominated members while the lower House, the House of the People, has got only elected members. So the President, it appears from this article, will be elected both by elected members and by nominated members of Parliament. And clause (b) says that the President will be elected by the elected members of the Provincial Legislatures. I cannot understand why only the *elected* members of the Provincial Legislature are to elect him while both elected and nominated members of the Central Legislature are to elect him. This seems to me to be anomalous. Article 44 tells us how the members are to vote. There is no provision either in this article or anywhere in the Constitution as to how nominated members are to vote. There are provisions only for elected members. Therefore I think that there is some drafting mistake. That is the reason why I have moved this amendment that the word 'elected' be added in clause (a) of article 43, so that both the elected members of the Central Legislature and the elected members of the Provincial Legislatures will elect the President. There will be no nominated members voting, and there is no provision as to how a nominated member is to vote. My amendment is very simple. I have not much to say. I have no doubt the House will accept it and also that the Honourable Dr. Ambedkar will accept the amendment.

Mr. Vice-President : I am not putting amendment No. 1063 standing in the name of Dr. Ambedkar and others to vote, because it is identical with 1064 which has just been moved.

Do you accept it, Dr. Ambedkar?

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Yes, Sir.

Mr. Vice-President : Then I will not put it to vote.

An amendment to amendment No. 1064 standing in the name of Shri Gokulbhai Daulatram Bhatt was not moved as the honourable Member is not in the House.

I disallow, as merely verbal, amendment Nos. 1065 and 1066.

Shri S. Nagappa (Madras : General): I do not move amendment No. 1069, Sir.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I move:

"That to article 43, the following explanation be added:—

'Explanation.—In this and the next succeeding article, the expression "the Legislature of a State" means, where the Legislature is bi-cameral, the Lower House of the legislature.' "

It is desirable that this amendment should be made, because there may be two legislatures in a State and consequently if this amendment is not made it will be open also to the Members of the Upper Chamber to participate in the election of the President. That is not our intention. We desire that only Members who are elected by popular vote shall be entitled to take part in the election of the President. Hence this amendment.

Mr. Vice-President : Mr. Mohd. Tahir may now move his amendment No. 23 to this amendment.

Mr. Mohd Tahir: I beg to move:

"That in amendment No. 1070 of the List of Amendments, in the proposed explanation, for the words 'the Lower House of the Legislature', the words 'the Legislative Assembly of the State' be substituted".

Now, Sir, with due respect to my friend Dr. Ambedkar I am moving this amendment. In my opinion, the term 'Lower House of the Legislature' has got no existence of its own. Because, we have defined 'the Legislatures' of the States not only in this draft Constitution, but also it will be found in the Government of India Act. There the Legislatures of the State have been defined either as the Legislative Council or the Legislative Assembly. We have given a particular definition for the Houses in the States, namely one, called Legislative Council and the other the Legislative Assembly, in article 148 of the draft Constitution. Therefore my humble submission is that wherever we have to use a term regarding either of these Houses, we must use only the term which has been defined in our Constitution and no other.

Sir, we will now consider how the term 'Lower House' originated. I believe it originated from the fact that till now the Members of the Legislative Assembly are being elected by the common people, the general masses of the country paying 6 annas or 12 annas as chowkidari tax and so on, whereas the members of the Legislative Council are being elected by people having higher qualifications. From this difference the feeling naturally arose in the minds of the people that the Legislative Assembly is the Lower House and the Legislative Council the Upper House. This distinction I submit should not continue in our minds after achieving the independence of India. Therefore to my mind it does not appear to be fair to call the Legislative Assembly the Lower House. In no respect can the Assembly be said to be the Lower House. In respect of the number of members, the Assembly is greater than the Council. Also, the Legislative Assembly has got more powers than the Legislative Council of the States. In conclusion I submit that I base my arguments on the first point, namely that when we have given a particular definition as regards the Chambers of the States, it is in all fairness desirable that we should use only that expression namely, the Legislative Council and the Legislative Assembly and no other.

Mr. Vice-President : The article is now open for general discussion.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, we listened with great respect to the arguments of Prof. Shah. He wants the President to be elected by adult citizens. To begin with, there is a technical difficulty. If the President is to be elected by adult citizens, every citizen gets the right to vote. Under the electoral system, the voters' list is prepared according to some rules and certain people who are lunatics, who are convicted people and who have lost their sannads are not entitled to vote. But in this term 'adult citizen' is included even citizens who are not entitled to vote at the general elections. That means that for the Presidential election those disqualified at the general election can vote, if the wording found in the amendment of Prof. Shah is adopted.

Secondly, Sir, the Constitution which is before the House has adopted the Parliamentary system of government. A Parliamentary system presupposes responsible government. The government is carried on not directly by the people but by the duly elected representatives of the people and inconsonance with that principle, the framers of this Constitution have wisely made the presidential election an indirect election, not a direct election as Prof. K. T. Shah envisages.

Thirdly, Prof. Shah wants that the President should be a non-party man. If the procedure that Professor Shah envisages is adopted, he will

[Shri K. Hanumanthaiya]

certainly become a party candidate. The presidential candidate who has to carry on an election campaign from one corner of the country to another will certainly be put up by some party or another and that election campaign will naturally generate party feelings and the man who is elected to the presidential office through this means will never be able to forget his party affiliations and he will not serve the purpose that Prof. Shah has in view. On the other hand, Sir, if he is elected by the members of the legislatures and the Parliament, he is more likely to be a non-party man, just as the Speaker of the Assembly or the Parliament is likely to be. Therefore, the purpose that Professor has in view that the President should be a non-party man will be better served by his being elected by the legislature and not directly by the people.

Then, Sir, Prof. Shah wants the President to be a real sovereign. That is not the intention of the framers of this Constitution. In this Constitution, the President is given the position of reigning and not ruling. The President here is more or less analogous to the King of England in the United Kingdom. If we give the President real power and make him the real executive head, the whole structure as envisaged by the Drafting Committee changes its character. This amendment does not fit into the picture of this Draft Constitution and should therefore be rejected.

Shri Biswanath Das (Orissa: General): Sir, my honourable Friend Prof. K. T. Shah, has raised a very important issue, *viz*., to introduce the system now in vogue in the United States of America. Sir, today in democratic countries, two different systems are working, one is the system now in vogue in the U.S.A. and the other is the Cabinet system of responsible government. We appointed a Committee, the Union Committee. This Committee, after due deliberation, weighing the *pros and cons*, all the advantages and difficulties of the working of the constitutions in various countries, have devised a system of responsibilities which is known as the system of Cabinet responsibility. Sir, the report of that Committee was adopted by the honourable Members of this House. It was up to Prof. Shah to have moved and taken a decision on this issue at that time. The Drafting Committee have only given shape to the decisions of the honourable Members of this House. It is, I am afraid, too late in the day to change the structure of our Constitution. A change in the system naturally means a change in a great many articles of this Constitution. Practically it disturbs the very basis of this Constitution. I would therefore appeal to my honourable Friend not to press his amendment. Sir, in justification of his plea, he has appealed to us to think of a President who would be a non-party man. I would plead with him that he has undertaken an impossible task. Sir, party system is the very basis of democracy. How on earth could you find a President who is anon-party man? Even the President of the United States is not a non-party man. Those who have seriously followed the working of the American Constitution and especially the last Presidential election must have come to the conclusion that it is the party system that is functioning in America. If Professor Shah thinks of a non-party President, he will have to think of something other than democracy. Sir, Turkey had a sort of non-party government but it has given it up in preference to a party system of government and elections have been introduced. You have to think of a totalitarian state if you think of a non-party President. It is impossible in the very nature of things. Therefore his plea that the President is and ought to be a non-party man does not at all appeal to me.

Sir, the whole question turns upon one issue, *viz*., who is going to be responsible to the people of the country with regard to the administration.

A President coming through the direct vote of the people as such has an independent existence outside the sphere of the Parliament. It so happens that sometimes, as honourable Members may have seen conflicts do arise between the Parliament and the President, and it makes a smooth working of the machinery difficult. Sometimes important programmes may be upset because of these differences. Even the Parliamentary system has its own difficulties. The Parliamentary system is in vogue in very many countries. In France, difficulty was experienced with the cabinet system of government with the result that in their new constitution some modification has been made with the result that they hope that hereafter the Parliamentary executive in France will be more stable than before. Therefore it is for my honourable Friend Prof. Shah to devise ways by which this Parliamentary system of government, the Cabinet system of government will function well and properly with stability. I would appeal to him that a change in the important structure of our Constitution is not possible at this stage. We haves at long and the country is waiting for a Constitution. I would appeal to him and also to the other honourable Members of this House to see that we speed up the discussion of the Constitution and pass it as early as possible. The Union Committee have given due attention to this question, and I would appeal therefore that the article may be accepted and the amendment may be rejected.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the amendments that have been moved, I can only accept 1064 and I very much regret that I cannot accept the other amendments.

Now, Sir, turning to the general debate on this article, the most important amendment is the amendment of Prof. K. T. Shah, which proposes that the President should be elected directly by adult suffrage. This matter, in my judgment, requires to be considered from three points of view. First of all, it must be considered from the point of view of the size of the electorate. Let me give the House some figures of the total electorate that would be involved in the election of the President, if we accepted Prof. K. T. Shah's suggestion.

So far as the figures are available, the total population of the Governors' provinces and the Commissioners' provinces is about 228,163,637. The total population of the States comes to 88,808,434, making altogether a total of nearly 317 millions for the territory of India. Assuming that on adult franchise, the population that would be entitled to take part in the election of the President would be about 50 per cent. of the total population, the electorate will consist of 158.5 millions. Let me give the figures of the electorate that is involved in the election of the American President. The total electorate in America, as I understand—I speak subject to correction—is about 75 millions. I think if honourable Members will bear in mind the figure which I have given; namely, 158.5 millions, they would realize the impossibility of an election in which 158.5 millions of people would have to take part. The size of the electorate, therefore, in my judgment forbids our adopting adult suffrage in the matter of the election of the President.

The second question which has to be borne in mind in dealing with this question of adult suffrage is the administrative machinery. Is it possible for this country to provide the staff that would be necessary to be placed at the different polling stations to enable the 158.5 millions to come to the polls and to record the voting? I am sure about it that not many candidates would be standing for election and they would not like non-official agencies to be employed, for the simple reason, that the non-official agency would not be under the control of the State and may be open to corruption, to bribery, to manipulations and to other undesirable influences. The machinery, therefore, will have to be entirely supplied from the Governmental administrative machinery. Is it possible either for the Government of India or for the State

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Governments to spare officials sufficient enough to manage the election in which 158.5 millions would be taking part? That again seems to me to be a complete impossibility. But apart from these two considerations, one important consideration which weighed with the Drafting Committee, and also with the Union Committee, in deciding to rule out adult suffrage, was the position of the President in the Constitution. If the President was in the same position as the President of the United States, who is vested with all the executive authority of the United States, I could have understood the argument in favour of direct election, because of the principle that wherever a person is endowed with the same enormousness of powers as the President of the United States, it is only natural that the choice of such a person should be made directly by the people. But what is the position of the President of the Indian Union? He is, if Prof. K. T. Shah were to examine the other provisions of the Constitution, only a figurehead. He is not in the same position as the President of the United States. If any functionary under our Indian Constitution is to be compared with the United States President, he is the Prime Minister, and not the President of the Union. So far as the Prime Minister is concerned, it is undoubtedly provided in the Constitution that he shall be elected on adult suffrage by the people. Now, having regard to the fact, to which I have referred, that the President has really no powers to execute, the last argument which one could advance in favour of the proposition that the President should be elected by adult suffrage seems to me to fall to the ground. I, therefore submit that, having regard to the size of the electorate, the paucity of administrative machinery necessary to manage elections on such a vast scale and that the President does not possess any of the executive or administrative powers which the President of the United States possesses, I submit that it is unnecessary to go into the question of adult suffrage and to provide for the election of the President on that basis.

Our proposals in the Draft Constitution, in my judgment, are sufficient for the necessities of the case. We have provided that he shall be elected by the elected members of the Legislature of the States, who themselves are elected on adult suffrage. He is also to be elected by both Houses of Parliament. The lower House of the Parliament is also elected directly by the people on adult suffrage. The Upper Chamber is elected by the Lower Houses of the States Legislatures, which are also elected on adult suffrage. Therefore, having regard to these provisions, I think Prof. K. T. Shah's amendment is quite out of place. I, therefore, oppose that amendment.

Mr. Vice-President : I shall now put the amendments to vote, one by one. Amendment No. 1051 standing in the name of Damodar Swarup Seth.

The question is:

"That for articles 43 and 44 the following be substituted:—

"The President shall be elected by means of the single transferable vote by an electoral college composed of the members of Parliament and an equal number of persons elected by the legislatures of the States on population basis under the system of single transferable vote."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1053 standing in the name of Professor K. T. Shah.

The question is:

"That for article 43, the following be substituted:—

'43. The President shall be elected by the adult citizens of India, voting by secret ballot, in each constituent part of the Union.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 1057 standing in the name of Mr. Karimuddin. The question is:

"That for article 43, the following be substituted:—

"43. The President shall be elected on the basis of adult suffrage."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1068 standing in the name of Mr. Mohammed Tahir.

The question is:

"That in clause (b) of article 43, the word "elected" be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1064 standing in the name of Mr. Tajamul Husain.

The question is:

"That in clause (a) of article 43, for the words "the members" the words "the elected members" be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 1070 standing in the name of Dr. Ambedkar.

The question is:

"That to article 43 the following explanation be added:—

"Explanation.—In this and the next succeeding article, the expression "the legislature of a State" means, where the legislature is bicameral, the Lower House of the legislature."

The amendment was adopted.

Mr. Vice-President : Amendment No. 23 of List I (Fourth Week) standing in the name of Mr. Mohammed Tahir.

The question is:

"That in amendment No. 1070 of the list of amendments in the proposed explanation, for the words "the Lower House of the Legislature" the words "the Legislative Assembly of the State" be substituted."

The amendment was negatived.

Mr. Vice-President : I shall now put the article to vote.

The question is:

"That article 43, as amended stand part of the Constitution."

The motion was adopted.

Article 43, as amended was added to the Constitution.

Article 15

Mr. Vice-President : With the permission of the House, I should like to revert to an article left over: that is article 15. I have before me the proceedings of the House from which it appears—this was considered on the 6th December last—that general discussion had concluded and I had called upon Dr. Ambedkar to reply. At that time it was suggested that efforts should be made to arrive at some kind of understanding so that those who had submitted certain amendments might feel satisfied. I do not know the position now; but we cannot wait any longer. Dr. Ambedkar, will you please make the position clear? If no understanding has been arrived at, I would ask you to reply.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I must confess that I am somewhat in a difficult position with regard to article 15 and the amendment moved by my Friend Pandit Bhargava for the deletion of the words "procedure according to law" and the substitution of the words "due process".

It is quite clear to any one who has listened to the debate that has taken place last time that there are two sharp points of view. One point of view

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says that "due process of law" must be there in this article; otherwise the article is a nugatory one. The other point of view is that the existing phraseology is quite sufficient for the purpose. Let me explain what exactly "due process" involves.

The question of "due process" raises, in my judgment, the question of the relationship between the legislature and the judiciary. In a federal constitution, it is always open to the judiciary to decide whether any particular law passed by the legislature is *ultra vires* or *intra vires* in reference to the powers of legislation which are granted by the Constitution to the particular legislature. If the law made by a particular legislature exceeds the authority of the power given to it by the Constitution, such law would be *ultra vires* and invalid. That is the normal thing that happens in all federal constitutions. Every law in a federal constitution, whether made by the Parliament at the Centre or made by the legislature of a State, is always subject to examination by the judiciary from the point of view of the authority of the legislature making the law. The 'due process' clause, in my judgment, would give the judiciary the power to question the law made by the legislature on another ground. That ground would be whether that law is in keeping with certain fundamental principles relating to the rights of the individual. In other words, the judiciary would be endowed with the authority to question the law not merely on the ground whether it was in excess of the authority of the legislature, but also on the ground whether the law was good law, apart from the question of the powers of the legislature making the law. The law may be perfectly good and valid so far as the authority of the legislature is concerned. But, it may not be a good law, that is to say, it violates certain fundamental principles; and the judiciary would have that additional power of declaring the law invalid. The question which arises in considering this matter is this. We have no doubt given the judiciary the power to examine the law made by different legislative bodies on the ground whether that law is in accordance with the powers given to it. The question now raised by the introduction of the phrase 'due process' is whether the judiciary should be given the additional power to question the laws made by the State on the ground that they violate certain fundamental principles.

There are two views on this point. One view is this; that the legislature may be trusted not to make any law which would abrogate the fundamental rights of man, so to say, the fundamental rights which apply to every individual, and consequently, there is no danger arising from the introduction of the phrase 'due process'. Another view is this: that it is not possible to trust the legislature; the legislature is likely to err, is likely to be led away by passion, by party prejudice, by party considerations, and the legislature may make a law which may abrogate what may be regarded as the fundamental principles which safeguard the individual rights of a citizen. We are therefore placed in two difficult positions. One is to give the judiciary the authority to sit in judgment over the will of the legislature and to question the law made by the legislature on the ground that it is not good law, in consonance with fundamental principles. Is that a desirable principle? The second position is that the legislature ought to be trusted not to make bad laws. It is very difficult to come to any definite conclusion. There are dangers on both sides. For myself I cannot altogether omit the possibility of a Legislature packed by party men making laws which may abrogate or violate what we regard as certain fundamental principles affecting the life and liberty of an individual. At the same time, I do not see how five or six gentlemen sitting in the Federal or Supreme Court examining laws made by the Legislature and by dint of their own individual conscience or their bias or their prejudices be

trusted to determine which law is good and which law is bad. It is rather a case where a man has to sail between Charybdis and Scylla and I therefore would not say anything. I would leave it to the House to decide in any way it likes.

Mr. Vice-President: I shall now put the amendments one by one to vote. No. 523.

The question is:—

"That in article 15, for the words "No person shall be deprived of his life or personal liberty except according to procedure established by law" the words "No person shall be deprived of his life or liberty without due process of law "be substituted."

The amendment was negatived.

Mr. Vice-President : The question is—

"That in article 15, for the words "except according to procedure established by law" the words "due process of law" be substituted."

The amendment was negatived.

Mr. Vice-President : No. 528.

Shri S. V. Krishnamurthy Rao (Mysore): I do not press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President: No. 530.

The question is:—

"That in article 15, for the words "procedure established by law" the words "due process of law" be substituted."

The amendment was negatived.

Mr. Vice-President : No. 526

The question is:—

"That in article 15 for the words "except according to procedure established by law" the words "save in accordance with law" be substituted."

The amendment was negatived.

Mr. Vice-President : No. 527.

The question is:—

"That in article 15 for the words "except according to procedure established by law" the words "except in accordance with law" be substituted."

The amendment was negatived.

Mr. Vice-President : I shall put the article to vote.

The question is:—

That article 15 stand part of the Constitution.

The motion was adopted.

Article 15 was added to the Constitution.

Article 44

Mr. Vice-President : We shall now take up article 44.

The motion is:—

That article 44 form part of the Constitution.

I am going to call over the amendments one by one.

No. 1071 is of a negative character and is therefore disallowed.

(Amendments Nos. 1072 and 1073 were not moved.)

Amendment No. 1074 is disallowed as being formal.

Amendment No. 1075—Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar :

Sir, I move—

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"That in sub-clause (c) of clause (2) of article 44, for the words "such member" the words "the elected members of both Houses of Parliament" be substituted."

Before proceeding to give the reasons for the amendment I would like with your permission to go back for a minute to clause (2) of this article and explain the scheme as set out in sub-clauses (a) and (b) of that clause. Honourable Members will see that the President is to be elected by elected Members of the Lower House of each State Legislature and by elected Members of both Houses of Parliament—the two to form a single electoral college. Sub-clause (1) of article 44 says that as far as practicable there shall be uniformity in the scale of representation of the different States in the election of the President. It would have been possible to achieve this uniformity by the simple method of assigning each member of the electoral college one vote. But this is not possible because of the disparity between the members of the Legislature and their ratio to population that exists between the different classes of States. In the case of States in Part I of the First Schedule, article 149(3) fixes the scale of representation—one representative for every one lakh of population. In the case of States in Part III, no such scale is laid down. The scale may vary from State to State. In one State, it may be one representative for every 10,000 population. In another, it may be one for every 20,000. That being the position, the value of the votes cast in the election of the President by the members of the State Legislatures cannot be measured by the simple rule of assigning one vote one value. The problem, therefore, is how to bring about uniformity in the value of the votes cast by members who do not represent the same electoral unit. The formula adopted to obtain the value of a vote cast by an elected member of the Legislature of a State is to divide the population of that state by the total number of elected members of the Legislature of that State; and to divide the quotient so obtained by 1,000, and if the remainder is not less than 500 then add one to the dividend. This is what is stated in sub-clauses (b) and (c) of clause (2).

I now come to the amendment to sub-clause (c) which I have moved. With regard to the votes cast by members of Parliament, we are confronted by the same problem, namely, the disparity in the electoral units and consequent disparity in the value of the votes cast by them. This disparity also arises from the same causes. In the first place, the Council of States being elected by the State Legislature reflects the same disparity which exists between States in Part I and States in Part III. In the second place, there is the same disparity in the ratio of seats to population as between States in Part I and Part III in the election of members of Parliament.

There are two ways of achieving uniformity in the voting by members of Parliament. One is to divide the total number of votes capable of being cast by members of all the State Legislatures by the total number of members of all the State Legislatures and the quotient will be the number of votes which each member will be entitled to cast. The other method is to divide the total number of votes capable of being cast by members of the Legislatures of all the States by the total number of elected members of both Houses of Parliament. The first method is set out in sub-clause (c) as it stands. The second method is embodied in the amendment to sub-clause (c) which I have moved. The difference between the two methods lies in this. In the first method all members of the electoral college taking part in the election of the President are treated on the same footing in the matter of valuation of their votes. According to the second method the members of Parliament are given equal strength in the matter of voting as the members of the State Legislatures will have. It is felt that members of Parliament should have a better voice than what sub-clause (c) as it stands does. Hence the amendment.

Mr. Vice-President : No. 1076 is disallowed as being formal.

Amendment No. 1077—Mr. Mahavir Tyagi.

Shri Mahavir Tyagi (United Provinces: General): Sir, I may be permitted to move 1078 instead of 1077.

Mr. Vice-President : No. 1077 will not be put to vote. I allow 1078 to be moved.

Shri Mahavir Tyagi : Sir, I beg to move—

"That for clause (3) of article 44, the following be substituted:—

(3) The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote."

Sir, the system of majority preferential voting by the single alternative vote is the name of the method which has been envisaged in this article. Proportional representation by the single transferable vote is always as a rule used in such elections where the constituencies are plural and minorities are given the privilege of sending their representatives according to the proportion of the number amongst the electors. It is said that in Ireland the election of the President is held by single transferable vote. I submit that everything that is done else where should not be taken to be a gospel truth. From the very amendment the House will understand that while it elects only one man for one office, and there is only one office vacant which is going to be filled, the minorities cannot have any representation. It is proportional representation. How will they have a proportion in one man—that man belongs to one party. The minorities will have no proportion in that one President elected by proportional representation. Unless the constituency is plural the proportion does not come in. So it is neither proportional representation because he is a "representative"; generally speaking—in ordinary parlance—I do not know—one might be very critical and look into the dictionary—but generally speaking one representative is known as "representative". If there are more than one man then they may be known as "representation". One is not known as "representation".

Pandit Lakshmi Kanta Maitra (West Bengal : General) : What is majority preferential system?

Shri Mahavir Tyagi : I am coming to that. A single constituency for election is neither proportional because the minority does not get any proportion in one seat, Nor is it representation because representation always signifies a number of persons together, and not one person. One representative is known as representative. Therefore it is neither proportional nor representation. Nor is it a transferable vote. Transferable vote means a vote which is transferred from one person to another in the manner in which it is described in the single transferable voting system. The balance of a candidate's vote after his election, is transferred to another candidate. It is not a question of transferring the balance of votes here. There is only one candidate. The whole voting will be alternative so that if one candidate gets defeated and his name is eliminated, then the vote is altered as it is from the name of the defeated candidate; instead of the voter's first choice, the vote goes to his second choice. So this system, although it is called proportional, is not, in fact, proportional. Neither is it representation, as I have just now explained Nor is it a "single vote". As it is, every voter in the legislatures of the States will have about 99.8 or 99.7 votes. Here it is not a case of one man, one vote as is envisaged in the single transferable vote system. The total population of a State will first be divided by thousand, and the result will be further

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divided by the number of voters in the electoral college in the province, which means that the number of votes one member of the Assembly will cast may be about 100, never more than 100, it may be 99 point or so. I must also point out that in sub-clause (b) it is stated—

"If, after taking the said multiples of one thousand, the remainder is not less than five hundred, then the vote of each member referred to in sub-clause (a) of this clause shall be further increased by one;"

Here, by some clerical error probably, they have forgotten to mention what is to happen to the balance if it is less than half. Unless you mention that less than half will not be taken care of, or less than half shall be disregarded, the authorities may not disregard it. Just as in sub-clause (c) you have stated that fractions exceeding one-half will be counted as one and other fractions disregarded, so also you should have said something in sub-clause (b). Otherwise, the exact wording of this sub-clause (b) will be adhered to and each member of the legislative assembly in the Provinces and States may have not only 99 point something or 98 point something votes, but the calculation can go on to 98.0032 and so on. So a further serious defect will arise in the working of the complicated system of single transferable vote. On an average there will be 3,300 representatives of the States legislatures; and each one of them will have not only one vote, he will have so many votes. How can we call it a single transferable vote? They will not be a uniform number; one member will have 98 point something votes and in some other States it may be 80 votes only. So the number of votes each member will possess and cast will vary from State to State.

It is also not mentioned here that these so many votes with a voter will be given only to one candidate. Sir, I would very much like to draw the attention of the honourable Dr. Ambedkar to the effect of the clause as it stands at present. Each member of a legislative assembly will get a number of votes which will vary from legislature to legislature. I am sorry the honourable Dr. Ambedkar is not attentive.

Mr. Vice-President : Dr. Ambedkar, Mr. Tyagi wants to invite your attention to some points.

Shri Mahavir Tyagi : I want to invite attention to one point. The number of members in the legislatures in the provinces and States will be approximately 3,300 and.....

Shri S. Nagappa : Sir, can the honourable Member address another honourable Member? He has to address the Chair.

Shri Mahavir Tyagi : I am addressing the Chair. I want the honourable Member to pay attention to.....

Mr. Vice-President : Mr. Nagappa will kindly take his seat.

Shri Mahavir Tyagi: According to the calculations envisaged here, there will be approximately 3,300 members in the legislatures of the provinces and States. The votes they will have will not be one each. Each one of them will have as many votes as can be obtained by dividing the population of the State by one thousand, and dividing the result again by the number of legislators in the State. This means that each member will have not one vote, but as many as 98 votes or 97 votes or 80 votes and so on. How can you call such a system as single transferable vote?

I want to guard against one more defect, of which no notice seems to have been taken. You have not said that all these votes will be cast to one candidate. Suppose I am a legislator in U.P. and I have 98:5 votes and there are four candidates for one seat. You have never said that all the votes

should be given by me to one candidate only. I may give 90 votes of mine to one candidate, 4 to another and 5 to a third and so on. I can thus distribute my votes to the candidates according to my choice. You have said that each elector will have about 98 votes, but you have not said that all of them will have to be cast to one candidate. That being so, how will your single transferable system stand? I would request you to look into this and please correct this clerical error. You have not said that all the votes will be given to one candidate cumulatively and that they cannot be distributed among so many candidates.

Secondly, the single transferable vote does not exist here, because nobody has a single vote, everybody has plural votes. The number of voters will be 3,300 in State legislatures and the total number of votes will be about 3,30,000. And then the same number of votes will be cast here in Parliament by 735 voters. Therefore, here every voter will have something like 460 votes. In Ireland the system of single transferable voting might suit because there each voter has one vote, but it will not suit us here because here each one does not have one vote, but so many, and the number of votes a legislator gets varies from province to province or State to State.

Now, I come to the proposal I have made. My proposal is—

"The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote."

According to this system, votes can be transferred from one candidate to another and the candidate who gets the minimum number of votes will be eliminated from the contest, and his votes will be altered and counted in favour of the next higher candidate of his choice. And this process of elimination will proceed on till there remains only one candidate in the contest. He will be declared elected. I therefore submit that my phraseology is more suitable although the method will remain practically the same. Only there is a technical difficulty which I have pointed out.

Begum Aizaz Rasul (United Provinces : Muslim): Sir, I beg to move:

"That in clause (3) of article 44, the words "in accordance with the system of proportional representation" be omitted.

My arguments have more or less been covered by the speech of the previous speaker. The object with which I move this amendment is that the first condition of proportional representation is the existence of a multiple member constituency. If only one man is to be returned then the question of proportional representation does not arise and this point has been clearly made out by Mr. Tyagi. Therefore I do not want to take up the time of the House in repeating his arguments. It might have been understood that the single transferable vote would have been beneficial in this election, because it would have meant the elimination of candidates who got the least number of votes. I will give an example of proportional representation in a constituency which is a multi-member constituency. For instance, if there are 100 voters and 5 people have to be returned and party A gets 50 votes, B gets 25 and C gets 25, in ordinary election all the candidates returned will come from Party A. Whereas in proportional representation Party A will get 3, B will get 1 and C will get 1. The idea is that the proportion of the electorate is reflected in the number of persons elected. For this it is essential that there is more than one seat but when there is only one seat how can the proportion of the electorate be represented in that seat, because one seat cannot be portioned into 3 or 2? Therefore I believe that this system of proportional representation will certainly not be correct for the election of the President and the minority as such where it is able to send in its candidate in a multiple member constituency cannot do so in a constituency which can only return one member. Hence it is that I have moved this amendment.

(Amendment Nos. 1080, 1081 and 1082 were not moved.)

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, I propose to move amendment No. 25 on List I (Fourth Week) in place of Amendment No. 1083, because this amendment is acceptable to the honourable Member Dr. Ambedkar.

I beg to move:

"That for amendment No. 1083 in the List of amendments the following be substituted

"That for the explanation to article 44, the following Explanation be substituted:—

'Explanation.—In this article, the expression "population" means the population as ascertained at the last preceding census of which the relevant figures have been published.' "

This amendment really combines the purpose of amendments Nos. 1081 and 1083. Amendment No. 1081 tabled by Dr. Ambedkar wanted to get rid of the first part of the Explanation. Amendment No. 1083 which stood originally in my name really wanted to effect certain important verbal changes in the latter part of the Explanation and the amendment which I have moved combines the purposes of both these amendments.

With regard to the elimination of the first part of the Explanation, which corresponds to Dr. Ambedkar's amendment, I need not say anything. I shall confine myself to that part of the amendment with which I am concerned. In fact the House will be pleased to note that article 44 deals with the election of the President. By article 43 of the members of the Houses of Parliament at the Centre and the elected members of the Legislatures of the States are sought to be empowered to vote at the presidential election. By sub-clause (a) to clause (2) of article 44 it is provided that every member of the State legislature shall have a certain number of votes and that would be dependent upon the population of the State. But it is provided in the Explanation as it stands in the text that this population should be taken from the 'last preceding census'. I submit that the original Explanation may lead to an impasse, as for instance, when the election is going to be held the figures of the 'last preceding census' may not be available. For example if there is a census on the 1st January 1951, as it is normally expected to be, and if there is an election of the President in February or March 1951—within two or three months of the Census—the figures of 'the last preceding census' will not be available. It takes about a year to prepare and publish the census figures. Thus if we keep the phraseology of the Explanation as it is we shall be bound to assign votes to the members of the State legislature in proportion to the population as ascertained in the last preceding census, whereas the figures of the last preceding census would not be available for the purpose. The result will be that the election of the President cannot be held. In these circumstances I have suggested the amendment that we should take the population from the last preceding census 'for which the relevant figures have been published'. By these words the impasse would be avoided. If election is held within a short time of the census and the figures of that census are not available, then this amended Explanation will allow the figures of the previous 1941 census to be relied upon. That would remove the impasse which otherwise could not be avoided as we will have definite figures to go upon. In these circumstances I submit that the amendment should be accepted.

Mr. Vice-President : The article is now open for general discussion.

Prof. K. T. Shah : Mr. Vice-President, Sir, I had tabled an amendment on this clause suggesting its entire deletion which obviously was out of order, and has, therefore, been ruled out. My object in submitting that

amendment however, was to point out that the whole article sets up a machinery, not only very complicated and likely to give rise to serious disputes as regards the actual number of votes which a State may be entitled to, but which will fail, I submit, in the original purpose for which proportional representation by single transferable vote was devised. Proportional representation by single transferable vote is intended, I submit, to reflect in the legislative body all the shades of political philosophy, all the different interests, all the different opinions that may be found in a country, provided they can muster a given figure, say, 50,000 or 100,000, or whatever may be supposed to be the figure, which is entitled to have its voice heard in the legislative or similar large bodies. Proportional representation, therefore, is not suited, I submit, where the election is of the executive head, and where, after all a single individual is to be elected. I agree that you can work it on a proportional basis by having several candidates, and the votes of the different candidates are transferred from one to another according to the order of preference. That, however, will bring you something to this effect, that your finally elected President was the chosen representative, in the first degree, of let us say one-third: that he was the chosen representative in the second degree about one-tenth, that he was the chosen representative in the third degree—supposing there are three candidates—of one twentieth. This is a minority representative not of a majority.

I have had some experience of Proportional representation in the University of Bombay, and I have known that preferences as low as nine, ten, twelve and fifteen have actually been counted. Do you wish your President to be elected by transfers so that the fifteenth choice of a group may eventually succeed and he would eventually be elected? He would not be the representative even of a majority in the first degree—he would be the representative of a majority by a number of transfers, so that in the first degree he may actually be the representative of a minority. This is undesirable in the interests of national solidarity.

A properly organised minority may secure a sufficient number of votes for the individual or the candidate to stay on, until by transfer, re-transfer and re-retransfer he finally secures an absolute majority. That majority will be a misleading and a highly ambiguous majority, in which the major portion of the country will not be reflected.

I further feel that the machinery necessary for transfer and retransfer of anybody who gets last on the roll, so to say, of the list of candidates above will be itself causing difficulties, compared to which the difficulties urged on a previous occasion by the mere force of numbers does not appear to me to be so great. The latter difficulty seems to me to be needlessly exaggerated—that 200 million, voters voting will make the election impossible. The 200 million voters will not all be voting at one place and at one time. That is physically impossible. But 200 million voters scattered, let us say, in 20,000 centres and each centre voting its proportion of voters is not at all a difficult thing which would rise to the level of an impossibility. We can, therefore, rule out completely the question of actual popular representation in the choice of the head of the State as impossible. Nor is the administrative machinery in my mind so difficult to provide. If only you look back to the history of representative institutions in this country, at the Centre, or in the Provinces, from only about thirty or forty years ago you will find that the electorate has, at each change, jumped eight or ten or twenty times; and that those who had held that the mere size of the electorate would make it impossible to work it have proved false prophets.

Take the last rise in the electorate form a few hundred thousands rising, to about 35 millions, a rise of some 100 times. And if a suggestion like the one I had the honour to put before the House was accepted, you would raise it only be seven or eight times. That would not be a insurmountable difficulty.

[Prof. K. T. Shah]

In any case the difficulty created by the system of Proportional Representation, and the reflection that the President actually may not be the choice in the first degree of a majority, would undermine the very basis of respect and reverence that the Head of the State should command.

I suggest, therefore, that the system of Proportional representation, apart from the other difficulties that have been put before the House by those who have moved amendments, should itself convince the House that it is a very dangerous—not to say vicious—principle, and as such ought to be disregarded. By all means have it, if you like, in the composition of your Legislature.

By all means have it, if you like, in the composition of other similar bodies. But when you select the head of the State, or of any unit within the Union, you should avoid the principle of Proportional Representation, as it is a double-edged sword that may cut both ways. It may represent all shades of opinion; at the same time it may bring to the head of affairs a man who is a representative in the first degree, only of a minority.

On these grounds I support the amendment that the principle of proportionate representation be deleted and that the article be amended accordingly.

Shri A. V. Thakkar (United States of Kathiawar : Saurashtra). Mr. Vice-President, Sir, I do not propose to speak on the question of proportional representation but on another point regarding the 'last preceding census'. As is well known, since the census of 1941 was taken there have been very great changes in the population of the country, particularly in certain Provinces. I would refer to the Provinces of East Punjab and West Bengal. I would also refer to the small changes in the United Provinces and Bombay. There large numbers of Hindus and Sikhs and other population have come in and added largely to the general population in those four Provinces. At the same time a large number of Muslims have left these four Provinces and gone to Pakistan. Therefore the census of 1941 has been made thoroughly unrepresentative of the numbers of people residing in these four Provinces. I would suggest that the last preceding census, namely the one of 1941, has very little value, looking at it from a common sense point of view. Government may therefore arrange to have either a new census taken for the whole country specially for the purpose of this Constitution or necessary arrangements may be made early for taking the new census of these 4 Provinces. It may be suggested that the census of 1951 may be advanced by one year, say, it may be taken in the year 1950 instead of in 1951. Or a special census may be taken only for these four Provinces which I have mentioned and the number of seats representing the population of those Provinces be determined therefrom. Unless this is done it will be very unfair to certain communities. I will name only one instance.

I will give the instance of the Scheduled Castes of the Punjab. Large numbers of these people residing in West Punjab have come over to East Punjab and their number has inconsequence very much increased. The number of seats that the Scheduled Castes will get—specially reserved for them—will be much fewer, being nearly one-half of what they are entitled to get under the existing population of these castes. The same thing applies to the Scheduled Castes of West Bengal also, though to a smaller extent. In East Punjab the difficulty is a very serious one. Therefore this minority would not get half its due representation if the figures of the preceding census were adopted.

Shri Rohini Kumar Chaudhari (Assam : General): *[Mr. Vice-President, on this last day of the fourth session, but not at the very closing period, of this Constituent Assembly I desire to speak in Hindi in this House. I have come to entertain this desire as a result of the visit I made a few days ago to the Hindi Sahitya Sammelan which was meeting under the Presidentship of Seth Govind

* [ ] Translation of Hindustani speech.

Das. My friend Shri Prakasam made a speech in Hindi in the Sammelan, and it was such as to make him known for his courage in every part of the country. Indeed his speech was so very sweet and fine as to cause the spread of his fame as a man of courage in all parts of the world. It made me reflect that if Shri Prakasam, a resident of the Deccan, could make such a fine speech in Hindi there was no reason why I could not do so.....]

Mr. Vice-President : Are you speaking on article 44 or any other matter?

Shri Rohini Kumar Chaudhari : *[And I concluded that I could not fail in my attempt to speak in Hindi simply because I am an Assamese.] Sir, I have exhausted my Hindi.

Mr. Vice-President : You will kindly make better use of your time.

Shri Rohini Kumar Chaudhari : My honourable Friend Mr. Thakkar Bapa, in the course of his speech, referred to the United Provinces and the Punjab. Very naturally he has forgotten Assam—In Assam, in 1941 the war was almost at the door and the census was taken in a very haphazard manner. Therefore it is all the more necessary for the province of Assam to have this amendment, which will allow us to take into consideration the relevant figures which may be arrived at just before the election, adopted. If we can have a census which will show the figures of different provinces as they now stand for the purpose of preparing the electoral rolls it will be of very great advantage. Take the case of Assam. Even the actual numbers of people who have come in as refugees to Assam from East Bengal have not yet been taken. We surmise that some 3 or 4 lakhs of people have thus come to Assam already. Therefore it is necessary that these figures should be taken into consideration at the time of fixing the total number of members for the provinces. At present, the population of Assam minus the district of Sylhet has been taken; but many from Eastern Bengal and from Sylhet have come to Assam and their figures must be taken into consideration in fixing the total number of seats for the province. This should be done also for fixing the number of seats in the electorates. Therefore I commend to this House the acceptance of the suggestion that the latest census figures may be taken into consideration at the time of delimiting the constituencies.

Pandit Lakshmi Kanta Maitra : Mr. Vice-President, Sir, article 44 with which we are dealing now provides that as far as practicable there shall be uniformity in the scale of representation based on population of the different States at the time of the election of the President. It will thus be seen that this article, innocuous as it seems, constitutes the very backbone of the working of this Constitution. This article incidentally provides for the mechanism of representation in the different legislatures constituting the units of the Indian Union. The framers of this draft Constitution have come to the conclusion that they should try to bring about a workable uniformity in the representation that is going to be given to the different States. Now, in the Explanation of this article, it has been provided that 'population' in this article means, the population as ascertained at the last preceding census. To this, Sir, an amendment has been moved by my friend Mr. Naziruddin Ahmad which runs as follows: "The latest census of which the relevant figures have been published." These words are to be put in place of the words 'the last preceding census'. I understand that this amendment is going to be accepted by the honourable Chairman of the Drafting Committee which for all practical purposes means that it will be accepted by the House. Personally speaking I do not see how this amendment at all improves the position. In my opinion it makes the position worse. Sir, anybody with commonsense can understand what 'the preceding census' means, but few can appreciate what is meant by 'the latest census of which the relevant figures have been published'.

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* [ ] Translation of Hindustani speech.

[Pandit Lakshmi Kanta Maitra]

Sir, nobody knows, after a census has taken place, when the figures thereof are going to be published. It might be one year, two years or three or four years. When an election takes place, it is quite possible, I should rather say probable—that at that particular point of time the preceding census will not give you the relevant figures because it takes a lot of time to publish them. I therefore do not see how this amendment is going to improve the position. Unless the executive government—for a census is after all the function of the executive government and is conducted under orders of the executive government—takes proper steps to see that the publication of figures follows immediately the enumeration, I believe that the safeguard that is sought to be provided by way of giving uniformity of representation is going to be in a very large measure defeated. I want this aspect to be carefully considered. It is not as simple as we think.

Let us see how it will operate to the prejudice of certain provinces, apart from the question that enumeration and publication will not follow simultaneously and there is bound to elapse an interval of a pretty long time. Sir, we had the last census in 1941. I wish that my honourable Friend, Mr. Rohini Kumar Chaudhary from Assam, who started speaking in Hindi but broke down and started again in English, could make his point clear by making a straight speech in English. He had a point to make which unfortunately he could not. There is a very important point involved in this. In provinces like Assam, undivided Bengal, undivided Punjab, Sind and the North-West Frontier Province, where there was a preponderant body of Muslim population, there was at the time of the last census of 1941, a competitive race for increasing the numbers, and in these provinces that I have mentioned, except in Assam—I am not quite sure of Assam even though in Assam also a Muslim League Government was in power—it is a fact that communities developed a pathological interest in enhancing their numbers so as to get the maximum benefit in the next succeeding Constitutional Reforms. I cannot talk of other provinces because the Muslim community there was in a minority and no Muslim League Government was in power. So far as the provinces, I have mentioned, are concerned, I can say from my personal knowledge and experience—and I think Members from these provinces will testify to the same fact—that this was the state of affairs. The Census Commissioner also made an observation to that effect. Therefore, if today the census figures of 1941 are going to be any guide for fixing the number of seats in the particular provinces I have mentioned, we will get a very misleading picture of the population of these provinces indeed. Mind you, in undivided Bengal for more than ten years before partition, the Hindu community had absolutely no voice, had nothing to do with the Government or any of its departments. In any case, they were not in any important position and the dice were heavily loaded against them. Hence we clamoured then and I do maintain even now that the figures of 1941 are in no way any index to the real population of these provinces. Now, after the 15th August 1947, some of these provinces were divided. Bengal was divided; West Bengal came within the Indian Union. East Punjab came into the Indian Union. Assam was divided and a portion was retained by Assam and a portion went to Pakistan. Sind and the Frontier in toto went over to Pakistan. Thereafter followed the terrible upheavals which everybody knows, as a result of which East Punjab came to be denuded of all Muslims and the West Punjab of all Hindus. The course of events compelled us to change the scale of representation for East Punjab and West Bengal in the present Constituent Assembly. Today the position is that you do not know if there is any Muslim soul in East Punjab or whether there is any Hindu soul in West Punjab. From Sind, I think more than seventy-five per cent. of the Hindus have already come over to the Indian Union. So far as Bengal is concerned, lakhs of people have already come over to West Bengal from East Bengal.

You might differ about the figures. Some may put it at twenty lakhs, others at thirty lakhs or at something more, but the most conservative estimate would be twenty lakhs from Eastern Pakistan due to this partition business, and the number is increasing day by day because the exodus still continues. By the time the general election under the new constitution is held, there will be a further influx and the number may swell to forty lakhs. The influx of people from East Pakistan began in 1941. When the Japanese entered the war against Great Britain, people left Eastern Bengal and came in very large numbers to West Bengal, in quest of jobs, war service, contracts and all the rest of it. Then came the disastrous Bengal famine of 1943 and again very large numbers of people moved from Eastern Pakistan to Calcutta where there was a greater chance of getting a morsel of food than in Eastern Bengal. Thus in 1943 the influx intensified—which brought in a much larger number of people than the ravages of the Japanese war. I therefore ask the Chairman of the Drafting Committee to take this fact carefully into consideration that the population of West Bengal today is not to be judged by the published and ascertained figures in the census of 1941, that it is considerably in excess of them and the excess is due to the facts I have mentioned. First, the influx commenced with the Japanese aggression. Secondly it was intensified by the famine of 1943. Thirdly it has gone beyond all proportions due to the friendly activities of our friends in Eastern Pakistan. This is continuing and will continue, I am sure, notwithstanding all that we do in the Inter-Dominion Conferences. Therefore, Sir, the net result would be that if West Bengal is to be allocated seats on the principle of uniformity based on population figures of 1941 census as envisaged in this article, it will occasion grave injustice to the province which will be hopelessly under-represented in the legislatures, both Central and provincial.

If you want to avoid this, if you want a just and fair deal to be given to the provinces of West Bengal, East Punjab, Bombay and to the City of Delhi, where vast numbers of refugees from Pakistan have come and settled and have swelled their normal population, as indicated in the census figures of 1941, the first thing that the Government should do is that, before they put into effect the Constitution in so far as it relates to the composition of legislatures, they should order an *ad hoc* census in these provinces. I understand that the usual census would be due in 1951 and I further understand that the Government of the day is not prepared to wait till then for General Election under the new Constitution. They want to expedite the election in accordance with the Constitution which will be adopted. If this decision of the Government to enforce the Constitution and to hold the General Election thereunder, before the year 1951 stands, it is of utmost importance that there should be a fresh census before that, and that census should be ordered here and now for the provinces of West Bengal, East Punjab, Delhi and Bombay. These are the Provinces which are greatly affected, and I hope this aspect of the question would engage the serious attention, in the first instance, of the Chairman of the Drafting Committee, who, I am sure, will realize the injustice that would otherwise be occasioned. And I trust that he would advise the Government, of which he forms an important limb, that this should be given effect to before the Constitution is put into operation.

Sir, I have on several occasions, here and elsewhere, brought this matter to the notice of the authorities. I have pleaded with them for mercy and for justice in this respect. I want the House to bear in mind the consequences that would otherwise follow. On the one hand, the Hindu community would be hopelessly under-represented in the legislatures and on the other, there is every likelihood of the Muslim community getting heavy excess of representation, if the census figures of 1941 are acted upon. This would be a grave political injustice and I caution the Government to take note of this.

[Pandit Lakshmi Kanta Maitra]

Sir, I do not know whether I can really support this amendment with all my heart. As it is, I do not believe that this amendment improves the situation in any way. Anyway the whole matter is left to the House, and if the House thinks that the amendment of Mr. Naziruddin Ahmad will improve matters, I have nothing to say. Personally, I am of opinion that it does not improve matters.

Mr. Vice-President: I have here slips from four eminent members of our House. So far as I have been able to judge, the question centres round a particular amendment and I also believe that sufficient light has been thrown upon it. If honourable Members insist on their right to speak, I am willing to ask them one by one. On the other hand, if they are good enough to accept my suggestion, then the business of the House can be expedited. I am in their hands.

Many Honourable Members: A short discussion may be allowed.

Maulana Hasrat Mohani (United Provinces : Muslim): I want only two minutes, Sir.

Mr. Vice-President: Please come to the mike.

Maulana Hasrat Mohani: Mr. Vice-President, I have come here today simply to point out a very serious defect in this article and in all other sections relating to the election system that we have adopted in India, and that is this. The general procedure adopted in India and elsewhere also is that if there be only one candidate and there is only one seat, that candidate is automatically elected. I think this is a very serious defect in our system of election. In Soviet Russia even if there is only one candidate, still the election is held, as there is always a chance that a person may manoeuvre to remove the names of other rival candidates and in this way the electorate may be in a position to oppose him by a majority vote. Then it will not be on the basis that there is one candidate or one seat. I may say that I have not proposed any amendment in this Constitution because from the very beginning, I hold that this whole thing is absurd. I do not accept its authority. I regard this Constituent Assembly as not competent and therefore, I have not moved any amendment. I simply make a suggestion that something should be added by the Honourable Dr. B. R. Ambedkar and his Committee to remove this defect and adopt the same course that has been adopted in Soviet Russia. There, even when there is only one candidate, the election is still held to find out if it is not possible that the majority may be opposed to him. Even supposing there is not a sufficient number to oppose the man, I think, we are not justified in electing him automatically and taking him a selected.

Mr. Naziruddin Ahmad: With your permission, Sir, can I speak a few words?

Mr. Vice-President: I cannot break a convention which has been established after very great difficulty. Prof. Shibban Lal Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, I want to draw the attention of the House to one fact, to which my honourable Friend Mr. Tyagi referred. Herein, we have provided for proportional representation for the election of the President. I think that there is some mistake in this clause. Proportional representations is possible by means of the single transferable vote, but here every member will have more votes than one and they will be calculated according to elaborate and complicated calculations and I do not think that proportional representation is possible in such a case. I feel that Mr. Tyagi has rightly pointed out that the only way to elect the President in the first case can be by elimination. There should be voting and the man who gets the minimum votes should be discarded.

Then among the remaining candidates, there should again be voting and the candidate with the minimum number of votes should be discarded. In this way among the remaining two candidates, the man who gets more should be elected. That is the only way in which one man can be elected with the majority of votes. Proportional representation is not a direct method especially when every single voter in the Central Parliament will have a larger number of votes attached to him than members of the Provincial Legislature. What will happen is that the voters of the Central Legislature will give their first preferences to somebody, and similarly voters of the Provincial Legislatures will give preference to some other person and the preferences, when they are carried over to other members, are very difficult to calculate, because their ways are different. I, therefore, think that the Drafting Committee should reconsider this matter and substitute the system which I have suggested, and in that way, we can be sure that the man who is elected will have a real majority of votes and not votes which are less than 50 per cent. That I think should be one change in the article.

About the census, Sir, I also feel that there has been a great change in the population figures during the last ten years, especially in the big cities. I know in Cawnpore, the population in 1941 was four lakhs; now it is about ten lakhs. I do not know what will be the number of seats allotted to it and similar big cities. As has been pointed out by my honourable Friend, in the provinces of Punjab and Bengal, there has been a large exodus. I also know that the refugees who have come from outside, about a crore, have been distributed to all the provinces. I therefore agree with the revered Thakkar Bapa that there should be a census before the election. I must also suggest one thing. We are prepared to follow the principle of adult suffrage in the elections. We can allot seats for the first term on the basis of the number of electors in the various communities. Out of a population of 33 crores, you will have fifteen crores of voters and the seats may be distributed according to the proportion of the voters in the various communities. I think that is a better method. Either we do away with proportional representation altogether: that is one method of getting over the difficulty; still there will be difficulty in giving seats to the various provinces. I think this is a general difficulty and something should be done to remove it.

The amendment given notice of by Mr. Naziruddin Ahmad will only improve matters, if there is a census before the election takes place. If that is the purpose, I think that is a proper amendment to be accepted.

I think this system of election of the President by the different States is a proper system, when we have respected the system of direct election. Personally, I would have preferred direct election in which every voter would have voted for the election of the President by a direct vote. Although the President has no powers, still he would have great prestige. In fact, our President will be the substitute for the King in England. If the King in England has got prestige far above the Prime Minister, I think our President should have that prestige. I think this is the only method by which you can have an election in which the voters in every province will take part. I think at least this section should be reviewed by the learned Doctor to see that the system of proportional representation is replaced by the other system that I have recommended.

Shri R. K. Sidhwa (C. P. & Barar: General): Mr. Vice-President, Sir, this article relates to two important points: one relating to the election of the President in accordance with the system of proportional representation by means of the single transferable vote, and the other about the census on the population figures on which the representation of the different States has to be fixed.

[Shri R. K. Sidhwa]

Now, I consider, Sir, that the single transferable vote system is one of the best systems that has been produced. It gives the voter first choice, second choice and third choice for the election of a candidate. But, there is one factor: the single transferable vote system would work satisfactorily when there are more than one seat. Here is a question of electing one President. Therefore, I feel that while the system is very good, it would create many difficulties and complications if we adopt the method of the single transferable vote of which we have got sufficient experience. I would have preferred the elimination system in the election of the President. That would also give the right of voting to every voter and the candidate who gets the largest number of votes will be elected. For example, if there are five candidates, the man who gets the lowest number of votes is eliminated from the list. Then, all the voters again vote among the four remaining candidates, and whosoever gets the lowest number is again eliminated. Again, the same voters vote between the remaining three. At the end, all the voters exercise their vote between the remaining two. That means, each voter exercises the right for every candidate. In the election of the President, I would personally prefer the elimination system which would be really beneficial and efficient in working. I feel that the single transferable vote system would work satisfactorily where there are more than one seat and where a small minority has also the right of being returned.

Coming to the census, Sir, this is a very important matter and I should think that the point advanced by my honourable Friend Thakkar Bapa should not be lost sight of. Many honourable members have spoken on this subject and we all know that, after the partition, the 1941 census figures in certain provinces will certainly not work satisfactorily. I will give you an illustration. In Sind, there were thirteen lakhs of people. Except two lakhs who are now there, who could not be evacuated for want of transport, there are eleven lakhs of Sind his who are scattered over the various parts of the country. There are four lakhs of them in Bombay; about two and a half lakhs in the United Provinces. I may tell you that there are many of them in Ajmere and in the various other States. I may also tell you that forty five per cent of the population of Ajmere consists of Sindhis. In Rajputana States, Jaipur, Jodhpur, there are nearly two lakhs of them. How could we rely on the 1941 census figures? Again, the 1941 census figures were defective. On account of the war, actually, the behest was issued by the then Government that the census should be taken on a very moderate scale. If you refer to the 1931 and the previous census, you will find that particulars are recorded in respect of all columns so that it gives you an idea of what our population consisted of. In the 1941 census, half the number of columns have been done away with. That had a reaction on the number of the population in the various provinces. I therefore consider it a very suicidal policy if the 1941 census is to be taken into consideration, particularly for the four or five provinces where the refugees have migrated. I do not know the real meaning of Mr. Naziruddin's Amendment. The amendment says, "the latest census of which the relevant figures have been published". Assuming that the election is to take place in 1950, the latest figures would be those of the 1941 census. When it is said that Mr. Naziruddin's amendment is going to be accepted, I would like clarification on the point what is conveyed by the phrase, "latest census of which the relevant figures have been published." The latest figures are already there of the 1941 census. I feel that before the election takes place, there should be a census, particularly for the provinces to which the refugees have migrated. Otherwise, I think a great injustice would have been done to them if for no fault of theirs they should be denied the right of voting by taking into consideration the 1941 census figures. I consider, Sir, this is a very important matter.

Mr. Naziruddin Ahmad's amendment creates complications and that requires clarification.

Shri H. V. Kamath : (C. P. & Berar: General): Mr. Vice-President, I rise to reinforce the plea that has been made by our venerable colleague Thakkar Bapa and ably supported by our friend Pandit Lakshmi Kanta Maitra. It is common knowledge that the census of 1941 was taken under extraordinary circumstances. A World War of tremendous magnitude was on and hundreds of thousands of people were displaced from their homes and scattered not merely all over the country but all over the world. This was one fact which contributed to the incorrect enumeration of the last census of 1941. Since then we have had catastrophes and calamities in rapid succession; for four years thereafter that Warraged, and in the middle of the war we had a famine and then soon after the war, we had vivisection of the country. These calamities have led to the uprooting of vast masses of the population, the destruction of large numbers of people and certainly to movements of large numbers of people from one part of the country to another. If we want to be fair at the next election and provide proper and just representation to the people, it is very necessary that there should be a correct enumeration before the elections are held.

Mr. Naziruddin Ahmad : You may have a special census. How can you proceed without figures? My attention was directed to the figures—not the 1941 census.

Shri H. V. Kamath : I do not insist upon a regular census being held before the elections but we must have the figures, not merely for the purpose of this article, but as we all know the Constitution provides for and I think we adhere to the principle of reservation for certain communities like the Scheduled Castes and the Muslims. Unless we know and we have the figures of these communities for whom reservation will be made in the legislature, how can we allot the number of seats for these communities? It is hoped in some quarters that perhaps at no distant date people who have migrated from Pakistan to India and *vice versa* may be enabled to go back, to their countries. I think it is a vain hope and I do not think the *status quo ante* will be restored in the near future. I remember, Sir, in this connection last year when the Provincial constitution was discussed here in this House, my friend Mr. Khandekar raised this point about the Scheduled Castes. He said that in 1941 the enumeration of Harijans was defective and that it was an underestimate and therefore he wanted that before the next elections there should be a re-enumeration in the whole of India. In my opinion this applies not only to Harijans but to all the communities which have got to be properly represented in the Legislature under the New Constitution. Replying to Mr. Khandekar, Sardar Patel, if I remember aright, though he did not make any promise, but he assured Mr. Khandekar and others of his way of thinking that this point will be duly borne in mind and considered and that before the elections we would try our best to arrive at correct figures for the population of the various communities in this country. My friend Mr. Algu Rai Shastry the other day referred to the non-representation of Sindhi Hindus in this Assembly. It is a great anomaly that though, after the partition the East Punjab non-Muslims or Hindus and the West Bengal Hindus have been re-presented—their re-presentations have been increased after the movement of these people from West Punjab to East Punjab and from East Bengal to West Bengal,—Sind has gone by default. Sind is now represented neither in this House nor in the Pakistan Constituent Assembly. They have lost the one seat which was allotted to them, because the Hindus that have migrated from Sind to India are scattered. Some are in Bombay, some are in C.P. and I do not know where

[Shri H. V. Kamath]

the others are scattered, and therefore it is difficult for any Provincial Assembly to elect any Sindhi as from that province because under our representation system, there must be at least 10 lakhs of people for one representative in this Assembly. But whatever that may be, we ought to have the enumeration of all these masses of people who have migrated either from Sind or West Punjab or East Bengal or the Frontier to India, prior to the next elections. Unless we have a correct record of all these movements of very large number of peoples, almost unparalleled in our recent history, it will be unfair and unjust to the people of our country to hold elections before the correct enumeration is made, if not by the regular census, at least by an *ad hoc* census as my friend suggested.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I accept the amendment No. 25 of List 1 to amendment No. 1083 moved by my friend Mr. Naziruddin Ahmad. The other amendments I am sorry, I cannot accept. Now, Sir, in the course of the general debate, two questions have been raised. One is on the amendment of Mr. Naziruddin Ahmad. It has been pointed out by various speakers that it would be very wrong to base any election on the last census *viz.,* of 1941. I am sure there is a great deal of force in what has been said by the various speakers on this point. It is true that the 1941 census was in some areas, at any rate, a cooked census; a census was cooked by the local Government that was in existence, in favour of certain communities and operated against certain other communities. But apart from that, it is equally true that on account of the partition of India there has been a great change in the population and its communal composition in certain provinces of India, for instance, in the East Punjab, Bombay, West Bengal and to some extent in U. P. also. In view of the fact that the Constitution provides for representation to various communities in accordance with their ratio of population to the general population, it is necessary that not only the total population, of every particular province should be ascertained but that the proportion of the various communities to which we have guaranteed representation in accordance with their population should also be ascertained before the foundations of the Constitution are laid down in terms of election.

I have no doubt about it that the Government will pay attention to the various arguments that have been made in favour of having a true census of the people before the elections are undertaken. If I may say so, one of the reasons which persuaded me to accept the amendment of my friend Mr. Naziruddin Ahmad is that he used the word 'latest' in preference to the word 'last'. I thought that the word 'last' had a sort of a local colour in the sense that the last census may mean the periodical census which is taken every ten years; and the last census means the census taken before any operation of election is started.

Mr. Naziruddin Ahmad : I did not use those words. I said the last preceding census.

The Honourable Dr. B. R. Ambedkar : Anyhow, I did not pay much attention to what he said. But that certainly is my idea, that this clause shall not prevent the Government from having a new census before proceeding to have elections for the new legislature. I think that should satisfy most Members who have an apprehension on this point.

Shri Mahavir Tyagi : May I take it that you give an assurance that such a census will be taken ?

The Honourable Dr. B. R. Ambedkar : I cannot possibly give an assurance. But no government will overlook the vast changes that have taken place in the composition and the total population of the different provinces. We have guaranteed representation to a great population consisting of various minorities. There

has been a great deal of debate, as honourable Members know, over the question of weightage, and we know that weightage has been disallowed. If we now have the elections and allow them to take place and the seats to be assigned on the existing basis of population, when as a matter of fact, that basis has been lost by migrations, it might result in weightage to various communities, and no representation to certain communities. Obviously in order to avoid such a kind of thing and to see that no community has any weightage, undoubtedly, government will have to see that the census is a proper census.

Pandit Lakshmi Kanta Maitra : I want to know whether the honourable Member means that no election under the new Constitution should be held unless this census was taken.

The Honourable Dr. B. R. Ambedkar : Well, it seems to me only a natural conclusion, because the seats for the elections cannot be assigned unless the populations of the various communities are ascertained. Therefore, that seems to me the logical conclusion, and a new census will be inevitable.

The other question that was greatly agitated by Mr. Tyagi and by Begum Aizaz Rasul and certain other members related to the election of the President. Now, there are two ways of electing the President. One way is to elect him by what is called a bare majority of the House. If a man got 51 percent., he would be elected. That is one way of electing the President and that is the simple and straightforward one. Now, with regard to that, it may just happen that the majority party would be in a position to elect the President without the minority party having any voice in the election of the President without the minority party having any voice in the election of the President. Obviously no Member of the House would like the President to be elected by a bare majority or by a system of election in which the minorities had no part to play. That being so, the election of the President by a bare majority has to be eliminated, and we have to provide a system whereby the minorities will have some voice in the election of the President. The only method of giving the minorities a voice in the election of the President is, so to say, to have separate electorates and to provide that the President must not only have a majority but he must have a substantial number of votes from each minority. But that again, seems to me, to be a proposition which we cannot accept having regard to what we have laid down in the constitution, namely, that there shall be no separate electorates. The only other method, therefore, that remained was to have a system of election in which the minorities will have some hand and some play, and that is undoubtedly the system of proportional representation, which has been laid down in the Constitution.

Mr. Naziruddin Ahmad : There is to be transferability. How can there be proportional representation when there is only one man to be elected?

The Honourable Dr. B. R. Ambedkar : I really cannot go into this question in detail. To do so I will have to open a class and lecture on the subject; but I cannot undertake that task at this stage. However, it is well-known and everybody knows how the system works.

Mr. Vice-President : These interruptions show that some Members are not aware of the true nature of proportional representation. You need not pay attention to these interruptions.

Maulana Hasrat Mohani : What are you going to do if there is only one candidate?

The Honourable Dr. B. R. Ambedkar : If there is only one candidate, he will be elected unanimously (Laughter), and no question of majority or minority arises at all.

The other question asked by Mr. Tyagi was whether there was any procedure for eliminating candidates.

Shri Mahavir Tyagi : On a point of information, Sir.

The Honourable Dr. B. R. Ambedkar : No. I cannot yield. I am answering your point. Your point was whether there was a process of elimination in the point before me is that I want that the election of the President or the General representation involves elimination. Otherwise it has no meaning. The only thing that we have done is that instead of having several proportional representations, we have provided one single proportional representation, in which every, candidate at the bottom will be eliminated, until we reach one man who gets what is called a "quota".

Shri Mahavir Tyagi : But in the Parliament the system of alternative votes is adopted.

The Honourable Dr. B. R. Ambedkar : Alternative is only another name for proportional.

Sir I have nothing further to say on this point.

Shri Mahavir Tyagi : Sir, I want to know.....

Mr. Vice-President : Mr. Tyagi, my difficulty is I cannot compel the Chairman of the Drafting Committee to answer your questions. Neither can I compel him to clarify your doubts.

I am going to put these amendments, one by one to vote.

I put amendment No. 1075 to vote.

The question is:

That in sub-clause (c) of clause (2) of article 44, for the words "such member" the words "the elected members of both Houses of Parliament" be substituted.

The amendment was adopted.

Mr. Vice-President : No. 1078. The question is:

That for clause (3) of article 44, the following be substituted:

"(3). The election of the President shall be held by secret ballot and in accordance with the system of majority preferential voting by the single alternative vote."

That amendment was negatived.

Mr. Vice-President : No. 1079. The question is:

That in clause (3) of article 44, the words "in accordance with the system of proportional representation" be omitted.

That amendment was negatived.

Mr. Vice-President : The question is:

That for the Explanation to article 44, the following Explanation be substituted:

"Explanation.—In this article, the expression 'population' means the population as ascertained at the last preceding census of which the relevant figures have been published.

The amendment was adopted.

Mr. Vice-President : The question is:

"That article 44, as amended, stand part of the Constitution."

The motion was adopted.

Article 44, as amended, was added to the Constitution.

Article 45

Mr. Vice-President : The honourable Member concerned may move amendment No. 1084. I would like honourable Members to be as brief as possible, in which case we would be able to get through the article before the House concludes its deliberations today. But that does not mean that I am asking anybody not to speak or to omit important points which they might like to make.

Shri T. T. Krishnamachari : Sir, the honourable Member's amendment is substantially the same as the article, and deals only with the substantive part of the clause and not with the proviso. Is there any object in the honourable Member moving his amendment?

Mr. Mohd. Tahir: There is a difference in the meaning of the amendment and the article, and I shall explain how.

The Honourable Dr. B. R. Ambedkar : It is not an amendment at all: it is merely a transposition of the words. There is no difference at all.

Mr. Mohd. Tahir: There is some difference...

Mr. Vice-President : I do not want to stand in the way of any honourable Member but there does not seem to be much in this amendment. However, the honourable Member may move it.

Mr. Mohd. Tahir: Sir, I beg to move:

That for the substantive part of article 45, the following be substituted:—

"The term of office of the President shall be five years from the date the President enters upon the Office."

The point was raised now that between the article as it stands and the amendment there is no difference. First I will deal with the article as it stands. It says "The President shall hold office for a term of five years from the date on which he enters upon his office". Supposing the election of the President takes place in 1950 after the general election and the constitution of the Parliament, if there is a casual vacancy in the office of the President in 1951 or 1952, in that case the President will be holding office for five years, that is he will have the office from 1951 to 1955, whereas the Parliament which was constituted in 1950 ends in 1954. My amendment means that the term of office of the President will be for five years, which means that if there is any casual vacancy or the election of the President takes place in 1950 and then there is a casual vacancy in 1951, the office of the President who will be elected in the casual vacancy will end in 1954, that is the term of five years when the Parliament ends. This is the difference which I have made out in my amendment of the article as it stands.

The question now arises as to why I have moved this amendment. The only point before me is that I want that the election of the President or the General election should not be influenced by any authority in power. The election must always be free and democratic. For instance, if a man is elected as President in the casual vacancy and he continues in office after the term of the Parliament ends at the Centre, it follows that the man who will remain in office as President will easily influence the General election as well as the election of the President. I want, Sir, that there should be no influence on the general election or on the election of the President in any case and therefore if the article as it stands means that the President who is elected in a casual vacancy will also hold office only for the remaining term of five years, that is to say his office will run according to the term of the Parliament, then of course I am not going to press my amendment. But in case it means that the term of Parliament will end and the office of the President will continue, then surely my amendment will stand and I will press it. With these words I move and I hope the position will be made clear.

(Amendment No. 1085 was not moved.)

Mr. Vice-President : Amendment No. 1086 is disallowed as it is a verbal amendment.

Amendment Nos. 1087 and 1088 are identical. Dr. Ambedkar may move No. 1087.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

That in clause (a) of the proviso to article 45, for the word "resignation" the word "writing" be substituted.

Mr. Mohd. Tahir: Mr. Vice-President, Sir, I beg to move:

That in clause (a) of the proviso to article 45, for the words "Chairman of the Council of States and the Speaker of the House of the People" the words "members of the Parliament" be substituted.

I will not be very long. I only wish to submit that if the President, who has been elected by the members of the Parliament, wants to vacate his office by resigning his post, in all fairness it is desirable that he should address his resignation to the members of the Parliament and not to anyone else. The resignation letter may be handed over to the office, namely to the Speaker or to the Chairman of the Council of States, but he must address his resignation to the members of Parliament who elected him as President and to none else.

Mr. Vice-President: The next amendment is No. 1090 standing in the name of Mr. B. M. Gupte with an amendment to it by himself (No. 26 in List I. Fourth Week).

Shri B. M. Gupte (Bombay: General) : I desire to move the amendment in a slightly modified form. The modification is only formal. It is with regard to the re-arrangement of the clause. I seek your permission and that of the honourable House to move it in the revised form.

Mr. Vice-President : Does the House give permission to Mr. Gupte to move his amendment in a slightly different form? Of course it is not possible at this hour to supply copies of this to all the Members. So Mr. Gupte may read the original and the altered forms of the amendment.

Honourable Members : Yes.

Shri B. M. Gupte: Sir, I beg to move:

That for amendment No. 1090 the following be substituted:—

(1) Article 45 be re-numbered as clause (1) of that article.

(2) In clause (a) of the proviso to the said clause as so re-numbered for the words "Chairman of the Council of States and the Speaker of the House of the People" the word "Vice-President" be substituted.

(3) In the said article as re-numbered add the following clause:—

"(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) of this article shall forthwith be communicated by him to the Speaker of the House of the People."

Sir, the clause as it stands in the Draft Constitution provides that the resignation shall be addressed to two persons, namely, the Chairman of the Council of States and the Speaker of the House of the people. This is obviously inconvenient. It is therefore better that provision should be made that one person should receive the resignation and be responsible to set the machinery in motion to fill the vacancy. And that person is most properly the Vice-President. I have therefore provided that the Vice-President should receive the resignation. But at the same time it is desirable that the Speaker of the House of the people should also know it, and therefore by a subsequent clause I have provided that the Vice-President shall forthwith communicate this fact of resignation to the Speaker of the House of the people. I therefore hope the amendment will be acceptable to Dr. Ambedkar and to the House.

Mr. Vice-President : Does Mr. Kamath wish to move his amendment to this (No. 27 of List I. Fourth week)?

Shri H.V. Kamath : No. That has been covered by the amended amendment just now moved by Mr. Gupte.

Mr. Naziruddin Ahmad : Sir, I beg to move:

That for the words "House of the People" in paragraph(a) of the proviso to article 45 and in all the other places where these words occur, the words "National Congress" be substituted.

Sir, in the future Constitution there will be two Houses at the Centre; the popular House would be called the House of the People and the Upper House will be called the Council of States. My proposal is that the popular House should be named after the National Congress which has been largely instrumental in obtaining freedom for this country.

Shri T. T. Krishnamachari : But actually the Congress still exists.

Mr. Naziruddin Ahmad : I want to perpetuate the name of the National Congress and want it to be assimilated in the Constitution itself.

Mr. Vice-President : I think you need not take up the time of the House.

Mr. Naziruddin Ahmad : I shall be very very brief. The struggle for independence has been going on for the last sixty years or more and it is to culminate in the session of the Congress in Jaipur under the presidency of Dr. Pattabhi Sitaramayya. I submit that the struggles and the services of the National Congress be recognized officially and the popular House be named after it.

I have the American precedent where the Legislature is called the Congress I have chosen, however, here to give that name to the popular House which really represents the will of the people. I believe it is an amendment based on sentimental grounds.

Maulana Hasrat Mohani : Are you a member of the Congress?

Shri S. Nagappa : He wants to be now.

Mr. Naziruddin Ahmad : It does not require one to be a member of the Congress to recognize or admit facts.

Mr. Vice-President : I beg of you to remember that we have only twenty minutes left.

Mr. Naziruddin Ahmad : Sir, I submit that on sentimental grounds alone the amendment should be accepted. In fact the culmination of today's independence represents the blood, toil, tears and the sweat of the Indian National Congress.

Mr. Vice-President : Does Mr. Kamath wish to move amendment No. 1092?

Shri H. V. Kamath : Here also I have been forestalled by Mr. Gupte and so it does not arise.

(Amendment Nos. 1093 and 1094 were not moved.)

Giani Gurmukh Musafir : (East Punjab : Sikh): *[Sir, My amendment is:

That in clause (b) of the proviso to article 45 after the words "violation of the constitution" the words "or of law" be inserted.

In relation to the President clause (b) says—"The President may for violation of the Constitution be removed from office by impeachment in the manner provided in article 50 of this Constitution".

After the words 'violation of the constitution' it is very necessary to add the words 'or of law'. The President should be impeached not only for the violation of the Constitution but he should be treated in the same manner for the violation of law too.]

Mr. Naziruddin Ahmad : I beg to move:

That in proviso (c) of article 45, after the word 'term' the words 'or resignation as the case may be' be inserted.

By this proviso, the President shall continue in office, notwithstanding the expiration of his normal term of his office, till his successor enters upon his office. I want to make the proviso to apply when he resigns before his normal term expires. This amendment is practically a drafting amendment worthy of consideration:

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* [ ] Translation of Hindustani speech.

Mr. Vice-President : As no Member has desired to speak on the general discussion of this article, I propose to ask Dr. Ambedkar to reply to the debate. I have received a slip requesting for an opportunity to speak just now. It has come too late.

The Honourable Dr. B. R. Ambedkar : Sir, the only amendment that I accept is No. 1090 as amended by Mr. Gupte's amendment. The others I am sorry I cannot accept. There has been no point raised by any Member which requires any explanation.

Mr. Vice-President : I am going to put the amendments to vote.

The question is:

"That for the substantive, part of article 45, the following be substituted:—

'The term of office of the President shall be five years from the date the President enter upon the Office.' "

The amendment was negatived.

Mr. Vice-President : Now, the question is—

That in clause (a) of the proviso to article 45 for the word 'resignation' the word 'writing' be substituted.

The amendment was adopted.

Mr. Vice-President : The question is—

That in clause (a) of the proviso to article 45, for the words 'Chairman of the Council of States and the Speaker of the House of the People' the words 'members of the Parliament' be substituted.

The amendment was negatived.

Mr. Vice-President : Now I shall put amendment No. 1090 as modified by amendment No. 26(A) standing in the name of Shri B.M. Gupte to the vote of the House.

The question is:

That—

(1) Article 45 be re-numbered as clause (1) of that article.

(2) In clause (a) of the proviso to the said clause as so re-numbered for the words 'Chairman of the Council of States and the Speaker of the House of the People' the word 'Vice-President' be substituted.

(3) In the said article as re-numbered add the following clause:—

"(2) Any resignation addressed to the Vice-President under clause (a) of the proviso to clause (1) of this article shall forthwith be communicated by him to the Speaker of the House of the People."

The amendment was adopted.

Mr. Vice-President : The question is:

That for the words 'House of the People' in paragraph (a) of the proviso to article 45 and in all the other places where these words occur, the words "National Congress" be substituted.

The amendment was negatived.

Mr. Vice-President : The question is—

That in clause (b) of the proviso to article 45, after the words 'violation of the Constitution', the words 'or of law' be inserted.

The amendment was negatived.

Mr. Vice-President : The question is—

That in proviso (c) of article 45, after the word 'term' the words 'or resignation as the case may be' be inserted.

The amendment was negatived.

Mr. Vice-President : The question is—

That Article 45, as amended, stand part of the Constitution.

The motion was adopted.

Article 45, as amended, was added to the Constitution.

Mr. Vice-President : It is now a quarter past one.

Shri T. T. Krishnamachari : The next article has only one small amendment.

Article 46

Mr. Vice-President : We shall now take up the next article. Article 46 is now before the House for its consideration.

As amendment No. 1097 is for the deletion of the article I disallow it.

The amendment of Professor Shibban Lal Saksena to this amendment falls as the main amendment has been ruled out.

Shri Krishna Chandra Sharma (United Province : General) : Sir, I move:

That in article 46 the words 'once', but 'only once' be deleted.

My amendment is a very simple one. It is to the effect that if a capable and efficient man is available, why should he not be allowed to serve a second term by seeking re-election and giving the benefit of his service to the nation as long as he is efficient and capable of service.

(Amendment No. 1099 was not moved).

Shri H.V. Kamath : Mr. Vice-President, I move:

"That in article 46, after the words 'only once' a comma and the words 'but he shall not be so eligible if he has been removed from office by impeachment in the manner provided in article 50' be added."

Even considering as the article as it stands, I think this amendment is to a certain extent necessary, purely for the purpose of clarifying the content of the article. But now, in view of the amendment moved by Shri Krishna Chandra Sharma, it is necessary for us to make this absolutely clear. It is likely that, in case Mr. Sharma's amendment is accepted, a person may contest the election again for the presidentship some years after his first or second term. It may be said against this amendment that the party nominating a candidate will certainly not nominate a person who has been removed from office by impeachment. But, considering that public memory is so short and even party memory is short, and there have been instances in various countries of the world where men who have been accused and impeached for corruption and other nefarious practices have been able to fill some office or other at a later date when people had forgotten the past such a provision becomes necessary. Such things have happened in many countries and it is not unlikely that such a thing may happen here also—God forbid—when party memory being short one cannot completely exclude the possibility of some person who has been guilty of corruption or other misdemeanour being put up to contest the election many years later. Therefore it is only to clarify the whole content of this article that a person who has been impeached cannot stand for election at any time say, 5, 10 or 20 years later that I have moved this amendment. It is necessary to lay down that even though people may forget or overlook the fact that a person had been impeached and removed from office, he should not have the right to contest the election for the Presidentship of the Indian Union.

Shri Mahavir Tyagi : Sir, the amendment that I am moving is a very simple one. I move—

"That the following proviso be added to article 46:—

'Provided that it will not apply in the case of a Vice-President who holds or who has held such office only temporarily in an acting capacity.' "

The article deals with the admissibility of the President holding office a second time. My point is that a Vice-President who holds or who has held such office only temporarily in an acting capacity should not be debarred from standing for election to Presidentship twice. Of course, if "officiating" by the Vice-President is not considered as holding office or some such meaning is given, then my amendment will not be necessary. Either Dr. Ambedkar may accept my amendment or he may please clarify this point in his speech.

Mr. Vice-President : Even though this article is a very small and simple one, many honourable Members want to speak. I do not want to prevent

[Mr. Vice-President]

them from speaking but I would request them to withdraw their slips. If they insist on making their speeches before an already tired House, I am quite certain that what they may urge will not be taken into consideration. This is my view but I may be wrong.

Honourable Members : We will draw our request to speak.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am prepared to accept the amendment of Mr. Sharma, *i.e.,* No. 1098, for the deletion of the words "once, but only once".

With regard to Mr. Kamath's amendment, I think the proper time when this matter could be discussed will be when the issue as to the qualifications of the person standing for Presidentship is raised.

To Mr. Tyagi I may say that in view of the deletion of the words "once, but only once", his fears about the Vice-President are groundless.

Mr. Vice-President : I shall now put the amendments one by one to the vote. Amendment No. 1098. The question is:

"That in article 46 the words 'once, but only once' be deleted."

The amendment was adopted.

Mr. Vice-President : Then amendment No. 1100.

Shri H. V. Kamath : In view of Dr. Ambedkar's statement, I do not want to press it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Then Mr. Tyagi's amendment. It does not arise after Dr. Ambedkar's speech, but some pandit of technicalities might say that I did not put it to the vote. So I want to know if Mr. Tyagi withdraws it or not.

Shri Mahavir Tyagi: Sir, I withdraw it.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The question is:

That article 46, as amended, form part of the Constitution.

The motion was adopted.

Article 46, as amended, was added to the Constitution.

Mr. Vice-President : There has been a suggestion that the House should be adjourned for a few days for reasons which must be known to you all. Under the rules as they stand at present, the presiding officer does not have the power to adjourn the House for more than three days. Now I ask the House to permit me to adjourn the House for fourteen days, *i.e.,* till 10 A.M. on Monday the 27th December.

Shri T. T. Krishnamachari : Sir, a proper motion may be moved that the House may be adjourned for fourteen days.

Mr. Vice-President : I do not care how you bring it about. If what you suggest is the procedure, I am quite willing and a resolution may be brought forward in that form.

Shri Satyanarayan Sinha (Bihar: General): You can ask the House whether it is agreeable.

Mr. Vice-President : Is the House in favour of adjourning for fourteen days?

Honourable Members : Yes.

Mr. Vice-President : The House stands adjourned till 10 A.M. on Monday the 27th December.

The Assembly then adjourned till Ten of the Clock on Monday the 27th December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 27*th December,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Mr. Vice-President (Dr. H. C. Mookherjee): I have just received a letter from our President informing me that he has improved greatly, but there has been a slight relapse, which has compelled him to take a few days' rest. He, however, hopes to be here by the beginning of next year and to conduct the proceedings of the House on and from the 3rd of January next. I am sure the House will allow me to convey to him the greetings of the Season and along with that to assure him that we shall do our best to make as much progress as possible, so as to lighten his work. Is that the wish of the House?

Honourable Members : Yes, yes.

DRAFT CONSTITUTION—(*Contd.*)

Article 47

Mr. Vice-President : We shall now resume our discussion and start with article 47.

(Amendments Nos. 1102 and 1103 were not moved.)

Amendments Nos. 1104, 1105 and 1106 are of similar import; Amendment No. 1104 may be moved.

(Amendments Nos. 1104, 1105, 1106 and 1107 were not moved.)

Amendment No. 1108 is by Prof. K. T. Shah. I shall draw his attention to the last sentence of the new sub-clause, *i.e.,* sub-clause (d) proposed to be added by this amendment. He may please compare it with clause (1) of article 47. It is for him to decide.

Prof. K. T. Shah (Bihar : General): Clause (1) of article 47 gives some positive qualifications. What I propose to move is somewhat of a negative character, and therefore I thought that the two can go together.

Mr. Vice-President : All right.

Prof. K. T. Shah : Sir, May I move?

Shri T. T. Krishnamachari (Madras : General): May I point out that the latter part of this amendment is already barred. We have already accepted article 46 in an amended form, by which the President can be elected *ad infinitum,* any number of times. So the latter part of his amendment is barred and cannot be moved.

Mr. Vice-President : Have you heard what the honourable Member has said?

Prof. K. T. Shah : I have heard that, Sir. If I may again make a submission, that reaffirms the same thing. I do not see how it is finally passed.

Mr. Vice-President : I do not want to put any kind of stop to what you want to say, but it does seem to me that it is not needed. But I do not want to impose my will on you.

Prof. K. T. Shah : Sir, I quite realize that this new change in article 46 affects the latter portion and therefore, I will not move that portion. The other portion still remains and if you will permit me, I will move the other part.

Mr. Vice-President : Yes.

Prof. K. T. Shah : Sir, I move:

"That after sub-clause (c) of clause (1) of article 47, the following new sub-clause be added :

'(d) and is not disqualified by reason of any conviction for treason, or any offence against the State, or any violation of the Constitution';"

The amended clause would then read:

"No person shall be eligible for election as President unless he—

(a) is a citizen of India;
(b) has completed the age of thirty-five years;
(c) is qualified for election as a member of the House of the People;
(d) and is not disqualified by reason of any conviction of treason, or any offence against the State, or any violation of the Constitution."

As I just now mentioned, these amendments that I would like to introduce put emphasis on the negative side, or disqualifications, as against the positive side of qualification referred to in clauses (a), (b) and (c). I submit, of course, to the judgement of the House in having deleted the restriction included in the original draft of article 46, namely that no one should hold office as President once again. I regret, of course, that that should have commended itself to the good sense of the House, for I fear that the possibility of holding in unlimited succession the office of the President is apt to lead to undesirable consequences, on which one need not now dilate. Sir, you remember that the foundation or rather the destruction of the Republic of Rome was inaugurated by the life consulship of Caesar, which afterwards ended in a hereditary empire. But, as I started by saying, now that the House has in its wisdom, found that it is undesirable to introduce this restriction, I will submit to the good sense of the House, and not insist on the latter part of my amendment.

Even so, the qualifications that I have introduced in my amendment need, I think, to be positively or specifically stated. It is no use saying that all this is understood; and that no one with common sense would like to have any one as President who has been guilty of treason, or who has violated the Constitution. Many things, Sir, are matters of common sense which, under unknown conditions of the future or party passions, and in the heat of the election fever, may be found to be so completely ignored or extenuated that all those disqualifications may be forgotten.

The inclusion, therefore, of this categoric disqualification is a safeguard for the free and honest working of the Constitution, which, I think, should be acceptable to this House.

The disqualification in regard to treason is particularly important, because now that precedents have taken place in such matters, even as trial of defeated enemies for the so-called war crimes, you might begin to feel that whatever you may have done in perfect good conscience may nevertheless be found to be a penalty of your defeat under the influence of party passions, and as such may be liable to charges or accusations against which, in the prevailing atmosphere, there may be no defence, or no possibility of effective safeguard.

Fearing this I desire to leave no room for any doubt at all on the subject. Let the Constitution itself from the start make this particular point clear, that any one convicted of treason must be disqualified for being elected President. To me it seems that there could be no objection to this amendment being accepted; and though perhaps this is in a milder form, I personally hold the sin of violating the Constitution equally serious, and certainly consider that also ought to be made a disqualification for any future candidature in regard to Presidentship.

The later clauses will show that you have provided very effective safeguards for convicting any one as regards violation of the Constitution. If under those safeguards, with due process of law and fair administration of justice, a party has been properly convicted of violating the Constitution in any serious particular, then I think that in itself ought to be a bar against the candidature of

any such party. On those grounds I think the drafter of the Constitution should accept this amendment, and that it ought to be included in the Draft in order that anybody who is guilty of treason, or who has been guilty of violating the Constitution, should be excluded.

I commend this to the acceptance of the House.

Mr. Vice-President : Amendment No. 1109. Verbal; disallowed. Amendments numbers 1110 to 1112 are of similar import. The first of these may be moved. It stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I move:

"That in clause (2) of article 47, and in Explanation to clause 2, for the words 'any office or position of emolument', wherever they occur, the words 'any office of profit' be substituted."

Sir, this amendment is merely intended to improve the language of the draft.

Mr. Vice-President : Amendment No. 1111. Should that be put to the vote?

Shri H. V. Kamath (C. P. & Berar : General) : Dr. Ambedkar has stolen a march over me; this does not arise.

Mr. Vice-President : Amendment No. 1112.

Shri Mihir Lal Chattopadhyay (West Bengal : General) : That is already covered, Sir.

(Amendment No. 1113 was not moved.)

Mr. Vice-President : Amendments numbers 1114, 1115 and 1116 are verbal and are disallowed.

Amendment No. 1117, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for sub-clause (a) of the Explanation to clause (2) of article 47, the following be substituted:—

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a Minister either for India or for any such State; or' "

The object of this amendment is to remove a disqualification that might arise on account of the fact that a Governor of a State or a Minister is holding an office of profit under the Crown. It is desirable that the Governor of a State as well as a Minister both at the Centre and in the States should be permitted to stand for election and the rule of office of profit under the Crown should not stand in their way.

(Amendment No. 1118 was not moved.)

Mr. Vice-President : Amendments numbers 1119 to 1122 are verbal and are disallowed.

(Amendment No. 1123 was not moved.)

Amendment No. 1124.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move.

"That after clause (b) of the Explanation to clause (2) of article 47, the following be added:—

'provided that any such Minister shall, before offering himself as candidate for such election, resign his office'."

Sir, I am sure it could not have been intended by the draftsmen that a person in the position of a Minister should continue to be a Minister, and yet offer himself as a candidate. This is one of the items which to me appear to be a matter of commonsense and as such should be accepted; but, of course,

[Prof. K. T. Shah]

where an extraordinary sense prevails, commonsense may not get a chance. I would therefore, like to point out that there is a great danger in a Minister holding the Ministership, and yet offering himself as a candidate, and resorting to, or his workers and canvassers resorting to practices, which cannot but be condemned under any same system of constitutional Government. Accordingly, that ought to be prohibited by the fundamental constitution.

It is in order to guard against this danger that I would provide, in the Constitution itself, that any Minister, if he chooses to be a candidate for any such office, should first resign his post and offer himself like any other ordinary citizen, for this honour. Whatever he has gained by way of influence, whatever he has previously acquired by way of prestige, connection, etc., will still remain to him; they would not be lost to him. They may be an asset to him. But, let him not be at all liable to the suspicion that continuing in office, he is able to, even if he does not actually do so, utilise his office and position of influence in order to get elected or get more votes. That, I repeat, is a matter of serious import to the Constitutional freedom and good government of the country, and as such, this amendment should be accepted without any opposition. I commend it to the House.

Mr. Vice-President : There is an amendment to this amendment. It is number 27 in List I, fifth week, standing in the name of Pandit Thakurdas Bhargava.

(The amendment was not moved.)

Amendment No. 1125.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That the following new clause (c) to the Explanation of clause (2) of article 47 be added:—

'(c) Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be bought up by the Government of India'."

I regard this, Sir, as amongst the most cardinal amendments that I have had the honour to put before this House. This theme will recur from different angles as amendments to different articles hereafter. I would like to make it clear, however, that I have deliberately worded in the different cases the same idea in a different manner, not only because the verbal objection may apply that it has been already disposed of, but also because the angle of approach in the different articles is slightly different. Accordingly, whereas, one might be rejected, it does not necessarily become impossible for another to be accepted.

That, Sir, however, is a matter for you at the time when the other amendments come up for decision. But, I would like to say that the principle contained in this amendment is of the highest importance for an honourable and idealistic Government of the State.

Ideals, Sir, seem to be very much at a discount, except, of course, for declamation from public platforms. From the public platform we declare day in and day out the high ideals which we all profess to follow, and which we call upon our friends and admirers to follow, always thinking that they apply to the other fellows and not to ourselves, assuming that our conduct is beyond reproach. I feel, however, that even in a regime of saints entirely, it is by no means superfluous to offer a suggestion of this kind that, at any rate, the Head of the State should be, even more than Caesar's wife, above any suspicion what-so ever.

If he has any holding, if he has any interest, if he has any property to which he could seek or obtain advantage by any act of his policy or his Government's policy, which in the least he is in a position to influence, then, I submit to the

House, he would be liable as head of the State, and the entire Government would be liable, to suspicion and discredit, and it ought not to be permitted.

Sir, it must be within the knowledge of many Members of this House, who are at all interested in contemporary history of the world, that one of the matters that affected the otherwise heriocally worshipped President of the German Reich, in the days before the Nazis came to power, was that President Hindenberg allowed himself to be persuaded to help in the so-called assistance to Eastern Prussian landlords which paved the way for his discredit, and which led, in my opinion at any rate, to the establishment of the Nazi power.

That I hope all will agree was an undesirable thing for Germany, and its consequences have already been realised. This, therefore, is a counsel of perfection, or at any rate, a caution which we will do well to adopt, and to implement in our Constitution.

That the President should be free from any entanglements, that the President should be free from any interest other than that of the State as a whole, that he should be open to no temptation except the desire to serve his country to the best of his ability, even in the ornamental post that he may be given in the Constitution, is of such supreme importance that I think we cannot be too strong, and too definite about removing from his path every possible, every imaginable, every conceivable temptation. Accordingly, here is a constructive, a positive requirement that, before the President enters upon the functions of his office, before he can be inducted in his office, he must make a clear declaration of all his title, right or interest in any property, industry or business in any of these thing he may have held as a private citizen before he became President. Further, he must divest himself of it, and Government should take over that right or buy it from him.

This means that notwithstanding this provision, the holder of the Presidential office is not punished, he is not penalised, he is not impoverished, by the mere acceptance of or election to the Presidency. In his position, there would be, financially speaking, no change, no reduction. Morally speaking, however, his stature would grow far more; if you at all consider moral values, if you at all have any ideal that the Head of your State shall be free from any temptation, that the Head of the State shall be free even from any suspicion, then I put it to you that you cannot possibly, in decency, reject this amendment of mine.

By this, I am calling upon you to be true to those ideals which you are proclaiming everyday *ad nauseam* and which nevertheless, many of you at least, are openly breaking everyday in their lives. That being so, I have no hesitation in asking the House that this proposition, for the reason that I have stated, should be accepted, on pain of our being regarded as only preaching ideals for the purposes of hum bugging others, enunciating maxims which you do not believe yourselves. I make no apology in putting forward this amendment, and I trust without dissent this amendment will be accepted.

Mr. Vice-President : We shall proceed to put the amendments to vote.

Shri H. V. Kamath : We want discussion, Sir.

Mr. Vice-President : If you insist on it, I am prepared to allow it.

Shri H. V. Kamath : Mr. Vice-President, by your leave I rise to lend my support to the amendment of Professor K. T. Shah, No. 1108, moved by him just a short while ago—the first part. The first part of No. 1108 lays down certain disqualifications for the office of the President of the Indian Republic. On the last day of the last Session before we adjourned for recess, when I moved amendment No. 1100 providing for laying down certain disqualifications for the office of President, *viz.,* that if he has been impeached for violation of the Constitution, that will act as a bar to his contesting an election for the Presidentship again, when I moved that amendment, Dr. Ambedkar told the House

[Shri H. V. Kamath]

that amendment was not in its proper place but should come up at a later stage, *i.e.,* in article 47 which lays down certain qualifications or disqualifications for the office of Presidentship. I am glad to find that my Friend and scholar Prof. Shah has brought in this particular provision for violation of the Constitution and consequent impeachment as a part of this amendment just moved by him. I realise that article 83 of the Constitution provides—article 83 reads—

> "A person shall be disqualified for being chosen as, and for being, a member of either House of Parliament .....
>
> (e) or if he is so disqualified by or under any law made by Parliament."

It is conceivable that the future Parliament of Free India will make certain provisions to this effect as to who will be qualified and who will be disqualified. But to my mind this is far too important a matter to be left to the decision of Parliament. This goes to the root of the matter, the disqualifications on the score of treason or on the score of offence against the State or on account of impeachment because of violation of the Constitution- it is possible that when we come to article 83 we might incorporate certain of these disqualifications or all of them as disqualifications for being a member of the House of Parliament but we must be clear on this point, as to whether we shall leave them to a future Parliament to decide or whether we will incorporate these things in the body of the Constitution. I therefore would request Dr. Ambedkar when he rises to reply to this debate, to tell us clearly whether he will leave it to the Parliament of future India or whether he will embody these disqualifications clearly and plainly—plain as a pike staff- without any equivocation in this article 83. That much Sir, for the amendment No. 1108 of Prof. Shah.

Coming to amendment 1125 just moved by him, I am inclined to think that the principle embodied in this amendment is a very sound one. I would certainly welcome the proposition that a person on being elected President of the Indian Union must at least declare to Parliament, or to the people and the nation, what interests, and what shares he holds in any enterprise, business or trade in the country. In the last Budget Session of the Legislative Assembly, if I remember aright, this Assembly adopted the Factory Act, and one of the clauses or sections in that Act was to the effect that even the medical officer of a factory, when he is appointed to his post, must declare to the board of directors or the management or the government, what interests, shares or other similar interests he holds in the factory or in any of the allied concerns of that particular undertaking. If we are going to enforce such a thing in the case of a mere petty officer in a factory, it stands to reason that the President of the Indian Union must declare to the nation and to Parliament what interests he holds in any business or trade or enterprise in the country. I recognise and I do admit that the President is not invested with considerable power. But nobody would deny the fact that the President has been invested with considerable influence, and that influence can be abused by a President if he is not of the proper or right type. We have just come from the Jaipur Session of the Congress—at least some of us—where only a few days ago, the Congress passed a resolution on the standards of public conduct. Are we, Sir, here, serious about implementing that resolution or not? Inspite of the subsequent deletion at the instance of Pandit Nehru at the Jaipur Session, it applies to all Congressmen, from top to bottom. And if it applies to all Congressmen, certainly, the code of public conduct that we are going to lay down for Free India, should apply to all, Congressmen or non-Congressmen whenever they hold a post, high or low in the country. Certainly, Sir, the President's post, the President's position, is very important and if we are earnest about this resolution about public conduct. I would certainly plead before this House that the President of the Indian Union must publicly before entering his office, tell us, tell

Parliament, what interests and what shares he has in any business or other enterprise in the country, lest on any occasion, on any tempting occasion, he might abuse his position for the furtherance of any particular undertaking in which he is more interested.

Sir, I will not go so far as Prof. K. T. Shah and say that such rights or interests must be bought up by the Government of India. I would suggest that once he has declared what his interests and shares are, in any particular business or undertaking, then the matter must be left to the Parliament to decide in what way those rights or interests are to be dealt with, or administered or disposed of. If this much is admitted or conceded, that the President shall be obliged to declare and disclose his interests, then we can leave it to the Parliament of India to deal with this matter and decide how to dispose of or deal with the particular matter brought before it.

Mr. Vice-President : Dr. Ambedkar.

Shri Syamanandan Sahaya (Bihar: General): Sir, I have.....

Mr. Vice-President : I have called Dr. Ambedkar, I am sorry. But have you any amendment?

Shri Syamanandan Sahaya : No, I have no amendment, but...

Mr. Vice-President : If you had come to the front, you could have caught my eyes, because in that direction there is a bad glare.

Shri R. K. Sidhva (C. P. & Berar: General): But, Sir, we have not had adequate discussion of this article. Only one member has spoken.

The Honourable Dr. B. R. Ambedkar : If they want further discussion, I have no objection.

Mr. Vice-President : Dr. Ambedkar has been good enough to say he does not mind if other Members also speak. Will Shri Syamanandan Sahaya please come to the mike?

Shri R. K. Sidhwa : Sir ....

Mr. Vice-President : Mr. Sidhwa will always have the last word. I shall give him the last word.

Shri Syamanandan Sahaya : Mr. Vice-President, Sir, I am here to support the amendment which has been moved by Prof. K. T. Shah.

The Honourable Dr. B. R. Ambedkar : Which amendment of Prof. Shah?

Shri Syamanandan Sahaya : Amendment No. 1124 which reads like this:

> 'provided that any such Minister shall, before offering himself as candidate for such election, resign his office'.

Sir, it is not always that I have the good fortune to agree with Prof. K. T. Shah but I do feel that in this particular amendment which he has proposed, he has raised a very vital point, and I do think that in a matter like this, even through there may have been different decision elsewhere, this House must remain firm because Prof. K. T. Shah, in his amendment, desires to lay down a principle which has been accepted all over the world (Cries of No, No.) Yes, Yes. Everybody has the right to place his information and his knowledge. Even in the present Congress Committees, a person who desires to stand as President of the Provincial or District Congress Committee has to resign his seat, not merely as a Minister, but even as a member of the Legislative Assembly.

Pandit Balkrishna Sharma (United Provinces: General) : No, No. You do not know. Do not go on generalising like that.

Shri Syamanandan Sahaya : I come from a Province where this rule obtains; this is a very good rule. If other provinces are not following it, they are doing it to their own disaster.

Mr. Vice-President : You need not reply to these interruptions.

Shri Syamanandan Sahaya : I shall accept your advice, Sir. It is a very good advice.

Now, the position is, that the place which the President will occupy in our Constitution is a very high and important one, indeed, and it would be very unwise and unsafe if a person who is already a Minister, working as such, stands for election as President. Even though such a person may not himself desire it, the fact remains that a Minister in power is likely togather more support, directly and indirectly, than another person. It is therefore only fair and reasonable that the election of a President must be carried on in such a manner that no individual person may have any additional advantage over his opponents.

Considering the position that obtains in this country at present, it is hoped that there may not be much difficulty among the persons who happen to occupy this high position. They also have a high standard of morality and I have no doubt that they will themselves resign before they stand for Presidentship. But we are laying down in this Constitution a rule by which, if a Minister desires or chooses to stand as a candidate for election, he can do so and contest the whole of the election, occupying all the time the position of a Minister. That, Sir, in my opinion, would not be the right course to adopt, and considering the difficulties that one can foresee, it would only be proper that it should be laid down that no person who occupies the position of a Minister should stand as a candidate as long as he occupies that position. He should first be asked to resign and then he can stand and contest the presidentship like anybody else.

Before I close I would like the House to visualize a situation that will arise when a Minister is a candidate for election as a President. It will be like this. Who is the candidate? A Minister. Who are the voters? Members of the different Assemblies. Who are the Polling officers? Servants of the Government, some of them may be under the Ministry concerned. How does this look? Even assuming that there will be everything fair, I ask: Does it look fair to frame a constitution which not only sanctions but encourages such a situation?

Shri Algu Rai Shastri (United Provinces : General) : *[Mr. Vice-President, Sir, I rise to oppose the amendments moved by Prof. K. T. Shah, more specially his last one, No.1125 on the list. I may repeat what has been said several times previously and it is that the type of constitution Prof. K. T. Shah has in view can either be accepted in its entirety or cannot be accepted at all. At times such amendments as the present one, are moved by Prof. K. T. Shah which seek to make some changes in the constitution or in the basic concept on which it is founded. If a single amendment of Prof. Shah is accepted in any part of the Constitution, the entire structure of the constitution would be changed. His idea in moving this amendment is that our President—the President of our Republic—should be a person who has no private financial interests of his own at all. He wants that the President of our Republic should have no financial interest at all but at the same time in course of his speech he has said that if the President has any shares in any property the same should be purchased by the Government so that he may not become a pauper. The dread of private property seems to have influenced him in making this proposal even though he does not seem to desire the abolition of private property itself. He does not propose to expropriate the person, who is to be elected President, of his entire property. It is thus plain that he does

* [ ] Translation of Hindustani speech.

not stand for the abolition of private property. His only objective is that any person, after being elected President, should sell away all his financial interests or they may be acquired by the Government, and that such a person should make a specific declaration that he has no financial interest anywhere. It appears to me that these two ideas are contradictory to each other. On the one hand the institution of private property would remain when we allow him to own the monied wealth he receives on sale of his property and such an ownership is permitted by Prof. Shah because he apprehends that otherwise such a person will become a pauper. On the other hand he seems in my opinion, to have in view Plato's idealistic and Utopian communism under which rulers shall have no property, no financial interest and no money of their own and there would be a common kitchen and the rules would be leading an ideal life like saints and hermits having no personal financial interests. We can very well lay down in the Constitution that a person who owns a property or has any shares in any enterprise shall not be eligible for Presidentship. The object behind the amendment moved by Professor K. T. Shah is that after a person is elected President he should hold no share in any property but he can hold the same before being elected. In my opinion Professor Shah should aim at the abolition of individual ownership of property and nationalisation of the same so that no individual may possess any property. But we have already accepted and given a place to individual ownership of property in the articles we have passed earlier. Now at this stage it does not appear necessary to me to pass a provision enjoining upon a person to make a particular declaration and relinquish all his financial interests in order that he may honestly discharge the duties of his office. Of course, I do visualise a society in which the individual ownership of property is gradually abolished and commodity be brought under social ownership. I would prefer such a society. We can not accept the ideal of Plato's or such a communism which reduces our life to a mere hotel life. Such a society cannot be stable. It is possible to establish such a society in small communes. But it is difficult to run even a small municipal board on these lines. I have seen that the financial questions bedevils the working of even small bodies. Even in the 'Maths' of Sadhus disputes arise for succession to the Gadi. We must keep the reality in view and from the point of view of reality the proposed restriction is unnecessary. I, therefore, oppose the amendment moved by Mr. Shah.

The other amendment moved by Mr. Shah, which lays down that if any minister seeks election as President, he should resign from the ministerial office before doing so, cannot be accepted. It is evident that a minister who seek selection as President would not be in a position to secure votes of this vast population either by purchase or by undue influence exercised under the powers he possesses as minister. The people or the prospective voters in the Presidential election cannot be beguiled or coerced to sell their votes. This amendment too seems unnecessary and therefore in my opinion it ought to be rejected and the original article as standing in the Draft Constitution should be accepted.]

(Interruption)

Mr. Vice-President : It is not proper for experienced Parliamentarians to heckle a speaker in that way.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. Vice-President, I am, and in fact the whole House is, very grateful to you and also particularly, I would say, to the Honourable Dr. Ambedkar, for allowing us to speak. We know your powers. You can stop us at any time you like. But I would always request you to allow us even at this stage to speak as we are for the first and the last time drawing up a constitution for the whole of India. You will pardon me for using the word "gagging" officially. But do not gag us. Let us speak. The Constitution is not going to be framed within a year as the

[Mr. Tajamul Husain]

Government of India are expecting. They are mistaken. It does not matter if it finishes in two or three years, but give us time to speak.

Coming to the amendment I wish to point out that, as far as I understand it, the amendment of my honourable Friend, Prof. K. T. Shah implies that a person who wishes to stand for the presidentship of the Indian Republic should resign his seat if he happens to be a Minister, or resign his seat if he happens to be a Member of the Legislature. An honourable Member from my province of Bihar has just spoken and he has stated that the law in his province is that a Member of a Legislature who wishes to become the President of the Provincial Congress Committee has to resign his office. There was vehement opposition to this. I entirely agree with the opposition that is not the law. We find here that that the last President of the Congress, Mr. Kripalani, was also a Member of this House and a Member of the Dominion Parliament. Here we find that the Honourable the Speaker of the U.P. is a member of this House. This is not the kind of thing in Bihar. Since the Congress started its activities under the guidance of Mahatma Gandhi, Dr. Rajendra Prasad, the President of this House, was the President of the Provincial Congress Committee for a number of years. It is unfortunate that he had to leave our Province and come over to Delhi. When he came to Delhi and left Bihar somebody who was not a member of the legislature was elected as President and he died. Then we elected a member of the Provincial Assembly and he had to resign his seat in the Assembly. We wanted him to resign and he resigned. Afterwards another member of the provincial assembly was elected and he also had to resign his seat in the Assembly. So we in Bihar have this convention, though not as a law or rule, that a member of the legislature when he wants to become President, before he seeks election he must resign. It is a very good and healthy convention. After all the first President of the Indian Republic will be the first gentleman of this land and equal to any monarch in the world. We want that before he becomes President he should cease to have any connection with any legislature. Before his election as President a Minister, whether at the Centre or in the Provinces, must cease to be a minister: he must come in as a simple man, a non-member of any legislature, stand for election and get elected. That is what people want. This is a very simple amendment and it should be accepted by the House and by Dr. Ambedkar. That is all I have to submit to the House and I thank you, Sir, for permitting me to speak.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I regret that I am unable to accept any of the amendments which have been moved by my honourable Friend, Prof. K. T. Shah. There are three amendments which have been moved by Prof. K. T. Shah. One of them relates to the Minister as a candidate for the Presidency and the other two amendments relate to the President. I propose to divide my observations in reply to his speeches on the three amendments into two parts. In the first part I propose to devote myself to his amendment relating to the Minister.

Prof. K. T. Shah's amendment requires that if a person is holding the office of a Minister and wishes to contest an election, the first condition must be that he shall resign his office as a Minister. In other words, ministership by itself would be a disqualification for election. It seems tome that Prof. K. T. Shah has not devoted sufficient attention to his amendment. In the first place, if a Minister resigns then this amendment is unnecessary. The second point which I think Prof. Shah has not considered and which seems to me to be very crucial is this. Supposing we accept his amendment that a Minister shall resign before he stands as a candidate for Presidentship, it is quite clear that between the period of the dissolution of the old Parliament and the time

when the new Parliament assembles there can be no Ministers at all in charge of the administration. And the question that we have to consider is this. What is to happen to the administration during the period which is involved between the dissolution of the old Parliament and the assembly of the new Parliament? Are we to hand over the administration to the bureaucrats or the heads of the administrative departments to carry on until the new Parliament is elected? Or is there to be some kind of expedient whereby we are to go about and find a set of temporary Ministers who would take charge of Government during this short period of two or three months and thus forego the opportunity of contesting elections and becoming Ministers themselves in a new Parliament for the full period of their term? It seems to me that the amendment of Prof. K. T. Shah, if accepted, would create complete administrative chaos in the Government of the country and therefore I submit.....

Shri L. Krishnaswami Bharathi (Madras : General) : It does not refer to all Ministers: it only refers to one minister.

Shri Mahavir Tyagi (United Provinces : General) : And to deputy Minister also.

The Honourable Dr. B. R. Ambedkar : Supposing every Minister wants to contest the election and therefore every Minister will have to resign.

Prof. K. T. Shah referred to the fact that the Ministers generally monkeyed with the election or may manipulate or exercise their influence over the administration. That of course, to some extent, is probably true. But in order to eliminate the influence which Ministers exercise or might exercise on the elections the Draft Constitution has provided under certain articles (articles 289 to 292) for a special machinery to be in charge of what are called Election Commissions both in the Centre as well as in the Provinces, which would take charge of the elections to Parliament as well as to the State legislatures. They are to have complete superintendence, control and management of elections, so that whatever possibility that there exists of Ministers exercising their influence over elections has been sought to be eliminated and consequently the fear which Prof. K. T. Shah entertains has really no place at all. I am therefore, for these reasons, unable to accept his amendment.

Coming to his amendments which deal with the President, his first amendment No. 1108 sets out certain disqualifications such as conviction for treason, any offence against the State or any violation of the Constitution, etc. The reason why, for instance, we have not specifically mentioned in this particular article under discussion these disqualifications, will be obvious if the Members recall that we have made other provisions which would have the same object which Prof. Shah has in his mind. In this connection I would like to draw the attention of the House to sub-clause (c) of article 48 which requires that "the President shall be a person who shall be qualified for election to Parliament". Now the qualification for election to Parliament are laid down in article 83. Sub-clause (e) of article 83 leaves it to the Parliament to add any disqualifications which Parliament may think it necessary or desirable to add. It is therefore possible that the Parliament when it exercises the powers which are given to it under sub-clause (e) of article 83 may think it desirable to include in the list of disqualifications (it is empowered to add to those already enumerated under article 83) some of the propositions which Prof. K. T. Shah has enunciated in his amendment. I therefore submit that, although this particular clause does not refer to the disqualifications mentioned by Professor Shah, it is quite possible and open to Parliament to add them by any law that it may make in sub-clause (e) of 83.

Shri H. V. Kamath : On a point of clarification. Mr. Vice-President, if matters like 'unsound mind' and 'undischarged insolvent' are found important enough to be embodied in the article itself, what is the point in leaving this more vital and fundamental thing to Parliament and not giving it a place in the Constitution itself ?

The Honourable Dr. B. R. Ambedkar : I do not know. It is a mere matter of logic. It is perfectly possible to say that every disqualification should be laid down here. It is perfectly possible to say that some essential things may be laid down here and the others left to the Parliament. I cannot see any inconsistency in that at all.

Now coming to the last amendment of Professor Shah, No. 1125, I think a careful perusal of the language he has used is very essential. What the Professor wants is that every person who has to be a President shall, before assuming office, divest himself of his interest, rights, title, etc. in any business or concern which is being sponsored by Government or carried on by Government either itself or through any agency, and secondly that the Government should buy that interest from the President. In regard to this, the first thing that strikes me is that this is one of the most novel propositions that I have ever seen. I do not remember that there is any Constitution anywhere in the world which lays down any such condition. I should have thought that if any such condition was necessary it is in the Constitution of the United States where the President has got an opportunity of exercising administrative control, and administrative discretion and therefore the greatest opportunity of personal aggrandisement exists there. And yet, the Constitution of the United States is absolutely silent about any such condition at all. Professor Shah no doubt has tabled his amendment because he looks upon it as a merely consequential amendment to the original proposition which he had enunciated in the form of his amendment, namely, that the President should have the same position as that of the President of the United States. But our Constitution has completely departed from the position which has been assigned to the President of the United States. As I have stated over and over again, our President is merely a nominal figurehead. He has no discretion; he has no powers of administration at all. Therefore, so far as our President is concerned, this provision is absolutely unnecessary. If at all it is necessary it should be with regard to the Prime Ministers and the other Ministers of State, because it is they who are in complete control of the administration of the State. If any person under the Government of India has any opportunity of aggrandising himself, it is either the Prime Minister or the Ministers of State and such a provision ought to have been imposed upon them during their tenure and not on the President.

The third question that arises—I think it is a very concrete question—is this. Supposing we laid down any such condition; is it possible in the circumstances in which we are living, to obtain any candidate who would offer himself for the Presidentship and subject himself to the conditions which have been laid down by Professor Shah? I doubt very much whether even Professor Shah would offer himself to be President of the Indian Union if these conditions are laid down.

Prof. K. T. Shah : It is not my custom to interrupt speakers at all. But may I give him this categoric assurance that as far I myself am concerned, he can rest assured that there will be complete fulfilment of these conditions. *(Laughter).*

The Honourable Dr. B. R. Ambedkar : I am glad. But this country could not carry on under the assumption that Professor Shah would be the only candidate who would offer himself for Presidentship. (*Laughter*) Safety lies in multiplicity of candidates. Therefore we have to consider whether, from a practical point of view, we should have a sufficient number of candidates offering themselves for this particular post. And I have not the least doubt about it that, notwithstanding the very virtuous character of this amendment we should practically be suspending this particular provision from the Constitution if we accept this amendment.

For these reasons I do not accept any of the amendments.

Shri H. V. Kamath : Is Dr. Ambedkar opposed even to the disclosure of the candidate's interest or share? Is he opposed even to a declaration like that?

The Honourable Dr. B. R. Ambedkar : But that is not the amendment.

Shri H. V. Kamath : That is part of the amendment.

The Honourable Dr. B. R. Ambedkar : But that is not the amendment.

Mr. Vice-President : I will now put the amendments to vote one by one.

The question is:

"That after sub-clause (c) of clause (1) of article 47, the following new sub-clause be added:

'(d) and is not disqualified by reason of any conviction for treason, or any offence against the State, or any violation of the Constitution'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (2) of article 47, and in Explanation to clause 2, for the words 'any office or position of emolument', wherever they occur, the words 'any office of profit' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That for sub-clause (a) of the Explanation to clause (2) of article 47, the following be substituted:

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State; or'."

The amendment was adopted.

Mr. Vice-President : The question is:

"That after clause (b) of the Explanation to clause (2) of article 47, the following be added:

'provided that any such Minister shall, before offering himself as candidate for such election, resign his office'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That the following new clause (c) to the Explanation of clause (2) of article 47 be added:

'(c) Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be brought up by the Government of India'."

The amendment was negatived.

Mr. Vice-President : I shall now put the article as amended to vote. The question is:

"That article 47, as amended, stand part of the Constitution."

The motion was adopted.

Article 47, as amended, was added to the Constitution.

New Article 47-A

Mr. Vice-President : Amendment No. 1126 is almost the same, though not quite the same, as amendment No. 1125. Professor Shah may move it.

Prof. K. T. Shah : I beg to move:

"That after article 47, the following new article be inserted:

'47-A. Any person elected President shall, before he enters upon the functions and responsibilities of his office declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade, which is in any way aided or supported by the Union Government; and shall make over all such right, title, share, or interest to Government of India, to be held, during his term of office, in trust for him'."

[Prof. K. T. Shah]

As you have been kind enough to point out, this is not quite identical with the previous amendment that I had the honour to submit to this House. Whereas in the previous amendment I had suggested that the interest of the President be *bought over* by the State, here it is to be held in a trust for him. He remains the owner, and only is saved any kind of temptation, any kind of manipulation that may be possible in the business, trade or interest that may be in any way supported or aided by the State. Sir, I have been surprised at the lack of argument which has characterised the opposition to the previous amendment. If in answer to one's serious points, one is to be faced with such assumptions as that all the Ministers, for instance, might like at one and the same time to stand for the Presidency, and if that is permitted, there would be chaos, then I think it is equally open to hold that every Minister might become ill at one and the same moment and unable to discharge the functions of his office, thus leaving it to the bureaucracy to carry on the administration. This is no argument of an earthly or reasonable character. Any such cataclysmic event may happen, but in such a case of course, mere human ingenuity may be powerless to cope with it. But if you wish to object to my amendments on reasonable level grounds, and not take flights of fancy into the unreal, then I submit that in this matter there is no contradiction or impossibility that I am asking you to agree to.

The idea that you will have no candidate for the Presidency, merely because the constitution calls upon him to declare his interests and divest himself of all his right, title, share, property and interest, in any industry, trade or business, which is in any way aided or supported by the State of which he is the head is to my mind reducing the matter to an absurdity. After all, with all due respect to the Honourable Dr. Ambedkar, I think there are not in this country a majority of people who have any such right, or title, or property. The over-whelming majority of this country's people are without such interests. The possibility, therefore, of finding a candidate who has no interest in such matters will not certainly be so catastrophically small as Dr. Ambedkar in his opposition mood might fear.

If Dr. Ambedkar is thinking of only that class to be eligible to the Presidency who have such rights, who have such interests and shares, while I would point out that such a course would be unfair, I hope he will realise that it is desirable to safeguard them against any temptation of the kind that this amendment tries to guard against.

The fact, moreover, that no other Constitution contains any such provision is no reason, in my opinion, why, under the guidance of such a genius as Dr. Ambedkar, we should not break new ground. We might as well make our own precedents which Americans may copy as we have copied this from the English or Anglo-Saxon races. Why should Dr. Ambedkar and his colleagues be so afraid of taking a new step, even though the new step may be one in the right direction?

In all his arguments I did not hear anything to show that the proposition that I am advancing is in itself wrong.

Mr. Vice-President : Professor Shah, may I request you not to reply to Dr. Ambedkar.

Prof. K. T. Shah : Dr. Ambedkar went out of his way. It is against my practice.....

Mr. Vice-President : May I suggest that as both of us belong to the same profession, we should prove superior to this weakness.

Prof. K. T. Shah : I bow to your order; but I do feel, Sir, that argument seems to be absent, and prejudice seems to predominate in a discussion of this kind. If that is so, then I in my determination would go on moving every one of my amendments, whatever the result may be. I am also equally clear, that, before the eyes of the world, before those who have no prejudices of their own, we will not be holding ourselves as model legislators if we insist on rejecting such amendments for future generations. That is all I have to say, Sir.

Coming to the amendment proper, may I point out that in this I have tried deliberately to guard against being over-ruled, merely for repeating myself by changing the wording. It was urged, and urged, quite unfairly, that this would cover enterprises "carried on" by the State. Nothing of the kind. Here I am speaking only of any trade, industry or business, which is aided or supported by the State. That is a totally different thing from an industry or business being carried on by the State. I should have thought that those who have drafted this Constitution knew the difference between 'being carried on' by the State, and 'being aided or supported' by the State. If they do not understand this difference, I am sorry the drafting should have been done by people who cannot distinguish between simple propositions of this nature.

They might equally misunderstand or misread the difference between "buying over" and "holding in trust", which again in my opinion are totally different propositions. The English Constitution, Sir, is founded on conventions, not on any written document. That, I trust, even Dr. Ambedkar will admit. That being so, may I give him one illustration of the kind of rectitude that is expected from high officers of State. There was the case, Sir, some forty years ago, when the English Navy was thinking of going over to oil-burning instead of coal-burning. Oil was produced by Joint Stock Companies holding interests abroad while coal was produced at home. Admiral Fisher, who was then the First Sea Lord of the Admiralty, was to preside over the Committee which was appointed to investigate into the matter of changing over from coal to oil. There were three members of the Committee and they were all of the same view. Their recommendations were, therefore a foregone conclusion. Admiral Fisher, who had some oil shares in the Anglo-Persian and Iranian Oil Company, and who knew what the results of his recommendation would be, went over to the then King Edward VII, and asked for his advice. He knew the prospects of those shares once the report was published. The King advised, and the Admiral accepted his advice, that he must divest himself immediately of those shares if he was an honourable man, as he stood to gain considerable advantage from the change over from coal to oil. Admiral Fisher may not have a prototype here; but I for one hope that in this country, led and brought to this stage by Gandhiji, there are people who will be willing, only too willing, if elected to such exalted office as head of the State, to divest themselves of such rights and interests as might expose them to the slightest shade of suspicion. Even in the municipality of Bombay we have a convention that any member, who is interested in any enterprise carried on by the corporation, shall not vote when that matter comes up for consideration before the corporation. If that ideal is not suitable for you to copy, if that is a proposition which is not acceptable to you, I am very sorry that this House should be using the name in vain of people like Gandhiji, when we are not carrying out their ideals in this Constitution.

Mr. Tajamul Husain : May I speak, Sir?

Mr. Vice-President : If you insist.

Mr. Tajamul Husain : Mr. Vice-President, Sir, I am again thankful to you because you are exercising your powers in my favour. I have come to support the amendment of my honourable Friend, Professor K. T. Shah, in its entirety. His amendment is a very fair one. He wants that the person elected as

[Mr. Tajamul Husain]

President of the Republic should declare and divest himself of all his rights, shares, property, etc. in any enterprise, business or trade which is in any way aided or supported by the Union Government and should make over such rights, etc. to the Government, to be held in trust during the period he is occupying his exalted office as President of the Indian Republic. Now, Sir, in my opinion, this is a fair amendment but I am afraid that this amendment will not be accepted by the Honourable Dr. Ambedkar. Professor Shah comes forward with beautiful amendments but they are all lost because the honourable Member in charge of the Draft Constitution is not in favour of them. Therefore, with your permission, I want to move a verbal amendment to this.

Mr. Vice-President : I cannot allow you to do that. In that case other people would also come forward with verbal amendments. You may make a suggestion for the acceptance of Dr. Ambedkar.

Mr. Tajamul Husain : My suggestion is this: Mr. Shah's amendment does not say that when a person is elected President he should declare and divest himself of all his personal property. He only says that he should divest himself of his rights, shares or interests in any concern aided or supported by government and that such rights, etc. should be taken over and held in trust for him by the Government of India. I say that as it would come to the Government of India, I thought that Dr. Ambedkar would accept it. If, Dr. Ambedkar as the Law Minister of the Government of India is not going to accept it, then instead of the 'Government of India', let it go to the President's wife and children. That is a very simple matter. The article as amended would read thus:

"Any person elected President shall, before he enters upon the functions and responsibilities of his office, declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade, which is in any way aided or supported by the Union Government; and all such right, title, share or interest of the President shall be bought up by the President's wife and children, if he has none then to Dr. Ambedkar himself, the Law Minister."

With these words, I support the amendment and I move my oral amendment.

Mr. Vice-President : There is no amendment to be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I have nothing to say.

Mr. Vice-President : The question is:

"That after article 47, the following new article be inserted:

'47-A. Any person elected President shall, before he enters upon the functions and responsibilities of his office, declare and divest himself of all his right, title, share, property and interest in any enterprise, business or trade, which is in any way aided or supported by the Union Government; and shall make over all such right, title, share or interest to Government of India, to be held, during his term of office, in trust for him'."

The motion was negatived.

Article 48

Mr. Vice-President : On going through the amendments one by one, I find that Amendments Nos. 1127, 1128 and 1130 are of similar import. Amendment No. 1130 seems to be the most comprehensive and may be moved.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I move:

"That in clause (1) of article 48:

'(a) for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' be substituted;

(b) for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House' be substituted;

(c) for the words 'in Parliament or such Legislature, as the case may be,' the words 'in that House' be substituted'."

There was some defect in the original language and we have tried to improve it.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. Vice-President, we have already decided by accepting certain rules that amendments which are intended to beautify the language of an article will not be allowed. Improving the language is not now one of the objectives of an amendment. Before the amendment was moved, it looked like an imposing amendment, but Dr. Ambedkar has clearly admitted that it was intended merely to improve the language of the article. In that view, although it has been moved, it need not be put to the vote.

Mr. Vice-President : Certain powers have been given to the Chair and the Chair is going to exercise them in the way which seems best.

I understand that there is an amendment to this amendment—Amendment No. 28 of List 1 (fifth week) standing in the name of Mr. V. S. Sarwate.

Shri V. S. Sarwate [United State of Gwalior—Indore—Malwa (Madhya Bharat)] Sir, I move:

"That in amendment No. 1130 of the List of Amendments in article 48, before the words 'House of Parliament' the words 'of the ruling family of Indian States and is in receipt of political pension or of an allowance on account of privy purse' be inserted."

The amendment purports to say that if a member of the ruling family of an Indian State is elected President, he would have to divest himself of the allowance or the privy purse which he may be receiving.

My object is that the President of this Republic should be of such convictions and wedded to such an ideology as would be republican and democratic. Obviously a person who was lately a ruler of an Indian State and is in receipt of a privy purse or allowance is not expected to fulfil this requirement. It has been said that the President is more or less a nominal figure-head. All the same I would point out that the President is expected in times of emergency to discharge certain very grave and important functions and duties. Further, from his status and position he is expected to give a certain incentive and a certain directive in the best interests of the democratic republic, which we are trying to establish in India. Now all these requirements cannot be expected to be fulfilled by one who has been brought up and who belongs to a family, which must beholding and must have held traditions which are entirely different from those ideas which we call republican or democratic. Therefore, what is required by this amendment is that a late ruler of an Indian State should not be allowed to become President. That, however, does not debar him from standing for election, but debars him to this extent that if he is elected, he may not continue to receive the allowance. The amendment, if further read carefully, will show that the junior members of the ruling families are not debarred from standing or for holding the position of the President, since such junior members would not be in receipt of any allowance on account of privy purse. I need not point out that the Governors and the Governor-General, and especially the new President is expected, from conviction and from his bringing up and from his whole psychological set up, to be a person who would be so entirely devoted to democracy and republic, that there may not be the least shadow of doubt regarding his opinions, his democratic and republican opinions; but this is not likely to be expected in the case of a late ruler. Therefore, my submission is that this amendment may be accepted by the Mover of the original amendment.

Mr. Vice-President: Amendment No. 1127 stands in the name of Giani Gurmukh Singh Musafir. Does he want me to put it to the vote?

Giani Gurmukh Singh Musafir (East Punjab : Sikh): No, Sir.

Mr. Vice-President : Amendment No. 1128. Do you want me to put it to the vote?

Mr. Naziruddin Ahmad : Yes, Sir.

Mr. Vice-President : Amendment No. 1129. Verbal; disallowed.

Amendment No. 1131. Verbal; disallowed.

Amendment No. 1132. This may be moved.

(The amendment was not moved.)

Mr. Vice-President : Amendment Nos. 1133 and 1134 are practically the same. Amendment No. 1133 may be moved.

Mr. Naziruddin Ahmad : On a point of order, Sir, this is merely a verbal amendment.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (2) of article 48, for the words 'or position of emolument' the words 'of profit' be substituted."

Sir, this amendment is just for the sake of uniformity.

Mr. Vice-President : Amendment No. 1134. Do you want me to put this to the vote?

Shri H. V. Kamath: I have been forestalled by Dr. Ambedkar; but I would like to move amendment No. 1135.

Mr. Vice-President : We have now only come up to amendment No. 1134. Amendment No. 1135. You can move it.

Shri H. V. Kamath : I move, Sir,

"That in clause (3) of article 48, the words 'the President shall have an official residence and' be deleted."

That is to say, the clause will read thus, if the amendment is accepted.

"There shall be paid to the President such emoluments and allowances, etc. etc....."

In moving this amendment, Sir, I seek a little light from Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Which amendment?

Shri H. V. Kamath : Amendment No. 1135. My purpose in moving this amendment before the House is to request Dr. Ambedkar to throw a little light upon the necessity for incorporating such an insignificant, such a minor detail in our Constitution. I recognise, I admit freely that this Constitution, perhaps we are proud of the fact, is the bulkiest in the whole world. The emblem and crest that we have selected for our Assembly is an elephant. It is perhaps in consonance with that that our Constitution too is the bulkiest that the world has produced. Sir, May I ask in all humility whether there is any sense or any point in cumbering the Constitution with details like the President having a residence? If this be accepted, will it not be equally appropriate to say that the President shall have so many servants, the President shall have so many peons, chaprasis, the President shall have an A.D.C., the President shall have a Private Secretary, and what not? It may be argued, I see, Sir, that the President's residence is a symbol and therefore it must be mentioned in the Constitution. I do not know how many precedents there are for a thing like this to be embodied in the Constitution.

An Honourable Member : The Irish Constitution.

Shri H. V. Kamath : I am coming to that. In the American Constitution I do not know whether the White House is mentioned in the Constitution. White House is universally recognised as the President's official residence. Coming to England, I suppose 10, Downing Street is more universally known than Buckingham Palace among students of politics or present day affairs. 10, Downing Street which is the Prime Minister's residence is more widely known than Buckingham Palace. In our Constitution there is no reference to the Prime Minister's residence; we have mentioned only the President's residence. In our Constitution, the President is, more or less, as Dr. Ambedkar has just

now said, a figure-head and the Prime Minister is a far more powerful individual than the President. In the fitness of things, I personally feel that the Prime Minister's official residence should be mentioned rather than the President's residence.

Another little point is this. Suppose, the President has two residences—formerly I suppose the Governor in most of the provinces and even at the Centre the Governor-General had two residences, one for summer and one for the other seasons—suppose there are two residences, will this article debar the State from granting or sanctioning two residences for the President, one of summer and one for non-summer seasons? Will this come in the way? Therefore, the point is, why bother about this little thing like a residence for the President? After all, the President will not live under a tree or on a maidan; he will have a roof over his head; he will have a house; that goes without saying. After all, we are now aspiring to provide a roof over the head of everybody in our country. Does the House mean to say, does Dr. Ambedkar mean to say that the President will have no roof over his head? He may have one, two or three residences. Who knows how many he will have? Why restrict by means of this article the right of the Government or the nation to provide more than one residence to the President? Therefore, I feel, Sir, that this is—I do not know how this has crept into the Constitution—too paltry, too trifling a detail to be incorporated in the Constitution, and tends to burden our Constitution with unnecessary, irrelevant and superfluous detail.

I therefore move that this portion of the article regarding the provision of official residence for the President be deleted.

(Amendment Nos. 1136 and 1137 were not moved.)

Mr. Vice-President : Amendment No. 1138 standing in the name of Professor K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 48, after the words 'shall have an official residence' the following be added:—

'and such secretarial, clerical, or expert consultative assistance at public expense as he may consider necessary for the due discharge of his duties and responsibilities under the Constitution, or the laws made thereunder for the time being in force'."

Sir, this is one of the few inoffensive amendments which I have dared to put forward. It seems to be so self-evident that, except in extraordinary flights of fancy, imagination and impossibility, no one should question this. Accordingly I will not waste the time of the House by putting forward specific arguments in support of that. I trust the good sense of the House will lead it to accept the amendment.

Mr. Vice-President : Amendment No. 1139. Verbal; disallowed.

Amendment No. 1140, standing in the name of Professor K. T. Shah.

Prof. K. T. Shah : Sir, I beg to move—

"That the following new clause be added to article 48:—

'(5) Every President on completion of his term of office, and retirement, shall be given such pension or allowance during the rest of his life as Parliament may determine, provided that during the life time of any such President in retirement, the pension or allowance granted to him shall not be varied to his prejudice'."

This, Sir, is another novel idea which is not found in the American Constitution, and as such it is also trying to break new ground. I trust that, however, will not be regarded as an argument in itself against my motion, that since even the wise Americans have not provided for this contingency, we in India need not do so.

[Prof. K. T. Shah]

If that argument should be urged, may I mention that in one of the later amendments to the Parliament Act or Ministers' Salaries Act, the hoary old Mother of Parliament has provided for the Prime Minister's pension on retirement, and, if I am not mistaken, even for the Leader of the Opposition. Lest I should be misunderstood by this word, I wish no one will think me guilty of any personal implication in that latter statement. I am only quoting a provision of the law made by the British Parliament providing for the retiring Prime Minister a reasonable competence, so that one who has held the dignity of the Prime Minister of the United Kingdom should not be reduced to circumstances wherein, as in the case of Mr. Asquith, his friends would have to come to his assistance, and provide a sort of trust to enable him to pass his remaining years in peace.

Sir, it is a matter of no small concern to all of us that one who has held the office of the President of India should not, by force of circumstances, by economic necessity, be compelled to have recourse to any service, trade, business or activity of any sort, or even to political manoeuvring, which might bring him a competence. It must be the greatest of our public ideals, the greatest of our public concerns that whoever has been elected Head of the State shall, on retirement, be adequately provided with what is considered at the time adequate sustenance for him who has been President of India.

This has both a precedent, as I have just pointed out, and a principle in its favour. Take for instance, the provision made for Judges of the High Court who also hold apart of the Sovereign power of the State, and who on retirement are without question provided with a pension everywhere in the world. You have plenty of precedents for it, I mean for some retiring pension for the President. If you can provide and if you should provide some retirement allowance to high judicial officials on their retirement, why should you not provide for the Head of the State embodying the Sovereignty of the people though even for a time, some sort of an allowance or pension—call it what you like—which would have him from being reduced by necessity to resort to means that may not be considered honourable, or that may not be considered befitting the dignity of one who has been Head of the State?

Sir, the Constitutions, from which precedents are usually cited, were drafted at a time and were made for a people where those coming up for such offices were presumed to be so well off, so well provided and in possession of such worldly wealth, that the provision was a superfluous or unnecessary.

In fact it has been said as regards the President of America, or of the Prime Minister of England, that very often they have retired poorer by thousands than when they entered upon their office. And yet no compensation was found necessary to spend their retirement on a decent livelihood. What does that signify? In this case, Sir, if ideals such as have been preached in this country are at all to be realized in actual fact, if the poorest is to be able to claim one day to have at least the right to be elected President, if one who has no right, title or interest in any industry, aided, supported or protected by the State, and not merely *carried on* by the State, then in such matters I hope the mere consideration of economic necessity after the post has been filled with honour and dignity will not debar such a person otherwise highly qualified from being chosen as a candidate or being chosen successfully as the occupant of the post.

I think, Sir, that the consideration in favour of making some such provision by Parliamentary enactment is so overwhelming that if not in the words that I have had the honour to put forward, in some other way and in some other form, the principle embodied in this amendment will commend itself to the Draftsmen and those who support him; and as such will become part of the Act.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, Sir, I regret I cannot accept the amendments which have been moved. Professor Shah's amendment No. 1138 seems to be somewhat superfluous. It provides that the

President shall be given Secretariat assistance. There is no doubt about it that it will be done whether there is any provision in the Constitution or not.

With regard to his second amendment No. 1140 prescribing that a pension be given to the President on his retirement, I find that while I am agreeable to the sentiment that he has expressed that persons who serve the public by becoming members of Parliament undergo a great deal of personal sacrifice and that it is desirable that they should not be left unprovided for towards the end of their lives, it seems rather difficult to accept this particular amendment also. According to him, every person who becomes President and serves his term of office, which is 5 years, shall, at the end of 5 years be entitled to a pension. The second difficulty is that according to his amendment his pension shall not be altered during his life-time. Now supposing for instance one person who has been a President and has filled his full terms of years and has obtained a pension under the amendment of Professor Shah, suppose that he is again elected to be the President, what is the position? The position is that he continues to get his salary as the President in addition to that he will also be entitled to his pension. We would not be in a position even to reduce the pension in order to bring it down to his salary. Therefore, in the form in which the amendment is moved, I do not think that it is a practical proposition for anyone to accept. But there is no doubt about the general view that he has expressed, that after a certain period of service in Parliament, Members, including the President, ought to be entitled to some sort of pension, and I think it is a laudable idea which has been given effect to in the British Parliament, and I have no doubt it that our future Parliament will bear this fact in mind.

Then, with regard to the question raised by Professor Kamath about residential....

Shri H. V. Kamath : Sir, I am not Professor Kamath.

The Honourable Dr. B. R. Ambedkar : But he is quite entitled to be called Professor because he speaks so often. *(Laughter.)*

Shri H. V. Kamath : God forbid I should ever become a professor. *(Laughter.)*

The Honourable Dr. B. R. Ambedkar : Well, my friend Mr. Kamath asked me to explain why we have included this provision here, with regard to the official residence of the President, and he also twitted me on the fact that I was burdening the Constitution by mentioning it and other small minutiae. It might be though that this is a small matter and might not have been included in the Constitution. But the question I would like to ask Mr. Kamath is this. Does he or does he not intend that the President should have an official residence and that Parliament should make provision for it? And is there very much of wrong if the proposition was stated in the Constitution itself? If the intention is that.....

Shri H. V. Kamath : Sir, may I know whether the Prime Minister will or will not have an official residence?

The Honourable Dr. B. R. Ambedkar : Yes, this is merely a matter of logic, I want to know if he does or does not support the proposition that the President should have an official residence. If he accepts that proposition, then it seems to me a matter of small import whether a provision is made in the Constitution itself or whether the matter is left for the future Parliament to decide. The reason why we have introduced this matter in the Constitution is that in the Government of India Act, in the several Orders in Council which have been issued by the Secretary of State under the authority conferred upon him by the Second Schedule of the Government of India Act, official residences, both for the Governor-General and the Governors have been laid down; and we have merely followed the existing practice in incorporating this particular provision in the Constitution; and I do not think we have done any very

[The Honourable Dr. B. R. Ambedkar]

great violence either to good taste or done something which we do not intend to do.

Shri H. V. Kamath : On a point of clarification, Sir, may I know whether this particular clause of article 48 will stand in the way of the President being provided with more than one official residence? It speaks of the President having "an official residence."

The Honourable Dr. B. R. Ambedkar : Not at all. There may be two official residences.

Then, with regard to the amendment of Mr. Sarwate, No. 28, I would like to say that this matter may have to be considered when we deal with the Constitution of the States which will accede to the Indian Union. Today the situation is so fluid that it is very difficult to make any provision of the sort which has been suggested by Mr. Sarwate.

Mr. Vice-President : The amendments will now be put to vote, one by one. Amendment No. 1130, standing in the name of Dr. Ambedkar.

"That in clause (1) of article 48 :—

'(a) for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' be substituted,

(b) for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House' be substituted,

(c) for the words 'in Parliament or such Legislature, as the case may be,' the words 'in that House' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 28, standing in the name of Mr. Sarwate.

"That in amendment No. 1130 of the List of Amendments in article 48, before the words 'House of Parliament' the words 'of the ruling family of Indian States and is in receipt of political pension or of an allowance on account of 'privy purse' be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1128, standing in the name of Mr. Naziruddin Ahmad.

"That for clause (1) of article 48, the following clause be substituted, namely:—

'(1) If the President is a member of any Legislature of the Union or of any State, he shall be deemed, on his making and subscribing the oath under article 49, to have resigned such membership'."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1133, standing in the name of Dr. Ambedkar.

"That in clause (2) of article 48, for the words 'or position of emolument' the words 'of profit' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 1135, standing in the name of Mr. Kamath.

"That in clause (3) of article 48, the words 'the President shall have an official residence and' be deleted."

The Amendment was negatived.

Mr. Vice-President : Amendment No. 1138, standing in the name of Prof. K. T. Shah.

"That in clause (3) of article 48, after the words 'shall have an official residence' the following be added:—

'and such secretarial, clerical, or expert consultative assistance at public expense as he may consider necessary for the due discharge of his duties and responsibilities under the Constitution, or the laws made thereunder for the time being in force'."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1140, standing in the name of Prof. K. T. Shah.

"That the following new clause be added to article 48:—

'(5) Every President on completion of his term of office, and retirement, shall be given such pension or allowance during the rest of his life as Parliament may determine, provided that during the life time of any such President in retirement, the pension or allowance granted to him shall not be varied to his prejudice'."

The amendment was negatived.

Mr. Vice-President : The question before the House is that article 48, as amended, form part of the Constitution.

The motion was adopted.

Article 48, as amended, was added to the Constitution.

New Article 48-A

Mr. Vice-President : Now we come to the new article 48-A and amendment No. 1141 standing in the name of Prof. K. T. Shah. It will be seen that this amendment is similar to amendments No. 1125 and No. 1126 which have been negatived. Therefore it is disallowed.

Article 49

Mr. Vice-President : We now come to article 49.

The motion before the House is:

"That article 49 form part of the Constitution."

We will go through the amendments, one by one.

First is amendment No. 1142, standing in the name of the Honourable Shri G. S. Gupta; it is a verbal amendment and is disallowed.

Amendments Nos. 1143, 1144 and 1145 are of similar import. No. 1144 may be moved, standing in the name of Shri T. T. Krishnamachari.

Shri T. T. Krishnamachari : Mr. Vice-President, Sir, I move:

"That in article 49, after the words 'Chief Justice of India' the words 'or, in his absence the senior-most Judge of the Supreme Court available' be inserted."

Sir, this is only making a provision in case the Chief Justice of India is not present, some other Judge should do his function, and it is but proper that the senior-most judge of the Supreme Court should do this function. Sir, I trust the House will accept the amendment because it needs no further explanation.

Mr. Vice-President : Dr. Ambedkar, do you accept that amendment?

The Honourable Dr. B. R. Ambedkar : Yes, I do.

Mr. Vice-President : Then I need not put No. 1143 to vote.

Then comes amendment No. 1145, standing in the name of Shri Jaspat Roy Kapoor.

(Amendment No. 1145 was not moved.)

Mr. Vice-President : Then comes amendment No. 1146, standing in the name of Mr. Kamath.

Shri H. V. Kamath : Mr. Vice-President, Sir, by your leave, I move this amendment No. 1146 in a slightly amended form, as follows:—

"That in the affirmation or oath in article 49, for the words 'I, A. B. do solemnly affirm (or swear)', the following be substituted:—

'In the name of God, I, A. B, do swear'

or alternatively,

'I, A. B. do solemnly affirm'."

Sir, as I read the Constitution carefully I was left with a sadly uncomfortable feeling that there was a void in the Constitution, that there was a vacuum in the Constitution.

Mr. Vice-President : Mr. Kamath, Are you not moving your amendment inserting the words, "in the name of God"?

Shri H. V. Kamath : I have amended my own amendment.

Mr. Vice-President : I see, you are amending your own amendment.

Shri H. V. Kamath : Yes, Sir. When I perused the Constitution, I was left with the feeling that there was a void in it. We had forgotten, I do not know why, to invoke the grace and blessing of God. To me it is odd, it is passing strange that before an Indian Assembly, speaking on the Indian Constitution I have to come and stand before you today to plead for this amendment: to plead that God may find a place in our Constitution. I should have thought, Sir, that the Preamble itself should have opened with an invocation to God. Well, that is coming later on and we will see what will happen to that. Perhaps, it was the will of God that the Constitution should be barren of His name and that later on the name of God should be invoked in the course of a discussion on the Constitution. May I ask, Sir, do my friends think—those of them who do not attach any importance or value to this invocation—that by banishing God, by banishing the word 'God' from their minds and thoughts, or from the Constitution they arrogate to themselves the idea that thereby they are banishing God Himself from the Constitution? God forbid, that they should entertain any such thought. Do they think that it is possible to legislate God out of existence? The more, Sir, we avoid God, the more we try to flee from Him, the more He pursues us. There is a beautiful poem, "The Hound of Heaven" by Francis Thompson, which describes the state of mind of one who tried to flee from God.

"I fled Him down the nights
And down the days,
I fled Him down the arches of the years, etc."

and so he goes on : then he says:

"But with unhurrying chase, unperturbed pace
The feet of God pursued him,
And a voice beat more instant than the feet,
All things betray thee
Who betrayest me."

In India, Sir, with our ancient culture, with our spiritual genius, with the heritage to which all of us are heirs—one and all of us—it is needless for me to say how every activity of ours in every field of endeavour has been permeated through and through with the idea of an offering to God, the deepest spiritual idea. According to Hindu customs and traditions, our ceremonies open and begin with the invocation "Hari Om Tat Sat". Our Muslim friends have the Koran Sharif whose every verse starts with the invocation "Bismilla Al Rahaman Al Rahim". Our Sikh friends' Guru Granth Sahib opens with "Ekonkara Satnama Karta etc." Our Christian friends have been commanded by their Saviour to "Give up all thou hast and follow Me". The same idea has found a place in our own philosophy, namely, in the Gita :

Sarva Dharman Parityajya, Mamekam Sharanam Vraja !

Give up everything, even all Dharmas and seek refuge in me alone that is "God". Therefore it is needless to dilate very much upon this amendment of mine. As I have already said every act of ours from eating and drinking to the highest worship, is an offering, a dedication and a sacrifice to God, namely:

यत्करोषि यदश्नासि यज्जुहोषि ददासि यत्।
यत्तपस्यसि कौंतेय तत्कुरुष्व मदर्पणम्॥

yat karoshi yadashnasi yajjuhoshi dadasi yat
yattapasyasi kaunteya tatkurushva madarpanam

And here Sir, it is something very solemn that we are doing, and even if eating and drinking is to be an offering to God, then this Constitution which is a sacred task, must be an offering to God also. Our own teachers—all the old sages and seers and Rishis—up to the days of Mahatmaji and Netaji have been dominated by a supreme idea, namely that all our actions must be acts of sacrifice to God. I do not want to tell the House how the minds and souls of Mahatmaji and Netaji Subhas Chandra Bose were permeated with this love and "bhakti" of God and how they bathed their being ever and anon in the life-giving waters of the Eternal. Coming, Sir, to our own leaders of today, such as Sardar Patel, Rajen Babu our President, and our Governor-General Shri Rajagopalachari, you will permit me to quote from some of their recent speeches where they have enjoined upon us not to forget God in our daily activities.

The Governor-General, Sir, on Thanks-giving Day after the Hyderabad operations, in his speech, stated:

"Ministers, Generals, Soldiers, Police and Citizens, all are entitled to our gratitude. But nothing moves in this world but God moves it. We imagine we have done great things."

In our own conceit we imagine we have done great things. Proceeding, the Governor-General said:

"The truth is that God did those things. Let us be humble and deserve the grace which he so abundantly pouredon us. Let us not be proud. Let us daily fill our hearts with mutual love and trust."

Our President, Dr. Rajendra Prasad, last year when he broadcast a message on Independence Day, said:

"With the help of God and under the leadership of Gandhiji we have won the battle of freedom and gained our objective."

Sardar Patel recently in Bombay declared:

"We are grateful to God that we have succeeded in establishing stabilized conditions in our country to a certain extent."

I therefore feel that in a Constitution, apart from invoking the grace and blessing of God in the Preamble itself, when a solemn thing like an oath or affirmation is concerned, it will be an empty performance, if when we take a solemn oath we do not do it in the name of God. Netaji Subhas Chandra Bose in Singapore, when he became the Commander-in-Chief and Provincial President of the Arzee Hukumat-e-Azad Hind, took the oath which ran thus:

"Ishwar ke nam par main pratigy karta hun."

Therefore, Sir, in the end, I would appeal to the House that we are heirs to an immortal and a spiritual heritage, a heritage which is not physical, nor material nor temporal: a heritage which is of the spirit—a spirit that is, ever was, and ever shall be, a heritage that is eternal. Let us not squander this invaluable heritage. Let us not dissipate this heritage: let us remain true to our ancient heritage, our spiritual genius. Let us not lightly cast away the torch that has been handed down to us from time immemorial. Let us in the words of Swami Vivekananda aspire to conquer the world spiritually. Let us blaze forth a trail that will be the light of the world as long as the sun and moon and stars endure. I shall only end with the words which were ever on Mahatma Gandhi's lips:

"Ishwar Allah tere nam

Sabko sanmati de Bhagvan."

This amendment of mine, as amended, today I have moved before the House so that on this matter which I consider vital and fundamental we may have a unanimous House. Therefore I have amended with your leave, Sir.

[Shri H. V. Kamath]

the original amendment No. 1146 and in the amended form I move it before the House and commend it to the House for its acceptance.

Shri Mahavir Tyagi: Sir, I beg to move: that for amendment No. 1146 the following be substituted:

"That in article 49 for the words 'do solemnly affirm (or swear)' the following be substituted:—

'do swear in the name of God / solemnly affirm.'."

This will mean that those who believe in God will swear in the name of God and there will be liberty for those agnostics, who do not believe in God, only to solemnly affirm, so that there will be freedom for one's faith. My amendment is practically the same as Mr. Kamath's except that the change of words is made for those who do not believe in God, so that they can 'solemnly affirm' and others 'swear in the name of God'.

While moving this amendment I want to take the opportunity of expressing my views with regard to the name of God. In fact I am glad and proud of the amendment which my Friend Mr. Kamath has moved. This is the first time that the Constituent Assembly is considering the question whether it would bring in the name of God in the Constitution or not. In fact we should have brought it in the very beginning but since the Preamble did not come under consideration, we shall make another effort to invoke the name of God when we start to consider the Constitution from the beginning.

The Constituent Assembly having passed a resolution saying that the State will be a secular State, a lot of misunderstandings have been created on account of that resolution. It is for us to clear them. The name of God does not, in my opinion, interfere with the secularity of the State, because when a person elected as President goes to take the oath, even though a President, he is not virtually a President before he takes the oath: he is simply a person. He has no official capacity when he approaches the altar to take the oath. He is just an individual in his personal capacity and in that capacity he takes the oath. And even if the name of God were to interfere in any way with the secular character of the State, it would be so only when an official takes the name. Till such time as the President takes the oath he remains only a person. And when a person takes an oath he does it according to his personal faith.

Shri L. Krishnaswami Bharathi : What is the distinction?

Shri Mahavir Tyagi : Those who can see the distinction can find it out. An oath is a personal matter and it must be observed with all solemnity and the occasion when an oath is taken is a very solemn one, especially when the head of the State takes the oath. Personal religion does not allow of any temple, altar or rites. It is confined purely to one's internal cult of the Supreme God and the eternal obligations of morality. This is the personal religion of each individual. It is this personal point of view. My friend wanted to know as to what was the distinction. The distinction is that personal religion pure faith in God; it does not permit of any practice, profession, or rite. God is neither a physical precept nor a mental concept. It is the spiritual realisation pure and simple. There is no rite attached to it. No temples are needed nor any altars. I well understand the philosophy or the logic of the state being secular. For, in every land, where there are so many religions and so many communities, one cannot give any particular colour to the State. The State must in such cases be secular, so that the consolidation of the nation may be achieved. We have many religions and communities in India. But the name of God is a common factor

among them all. Every section believes in God, every group believes in God and every community believes in God. Therefore if we bring in the name of God in the constitution of our State, it will help us to unify the state, and will implement the secular character of the State rather than disturb its secularity. This is only by way of argument. The fact is that since we announced in this Assembly that ours was going to be a secular State, the announcement has given rise to all sorts of interpretations and misgivings. People began to think that as far as Government was concerned it had banished God altogether. I hope the Constituent Assembly by bringing in the name of God here will to some extent clarify the misunderstandings. Some vain kind of politicians in their attempt to imitate some fashionable slogans of the West have allowed themselves to believe that in a secular State God is taboo. A secular State means the state of Truth and God and eternity without prejudice to any particular religion. In India all our culture, and all our policy and civilization has been spun and woven round the one nucleus, God, and if God is banished I do not know what Swaraj will mean to India. Personally I along with so many others, seniors and juniors, and millions of people fought for thirty years for Swaraj. The Swaraj of my conception was Ram Raj. It was not the political freedom alone that mattered. If I may be permitted to say so, I care a tuppence for political freedom. India did not only mourn the loss of her political freedom but her real grief has been the loss of her freedom of spirit. Our spiritual freedom was first hit when Somnath was attacked. Since that time, all these hundreds of years, India has not been feeling free. Real Swaraj means "Ram Raj" How this idea of secularity has been misinterpreted, I will not be going out of the subject if I take the house into confidence and inform them that very recently at a conference of A. I. R. officials they came to the unanimous decision that the recitation of the Gita and the Ramayana, the Koran and the Bible should now be stopped. If secular State means that our children will not know about the Ramayana or listen to the Gita or the Koran or the Granth what is political freedom worth? This is stretching the meaning too far. If God is banished from this "Ram Rajya", India will become Ayodhya without Ram. I submit, Sir, by 'Ram' I mean Hindu God and also Christian God. (*Laughter*) I submit that God is a common factor and therefore we must invoke Him here and also in the Preamble when the occasion arises. Even in the British Parliament, when they assemble, they do so only after prayers. They hold prayers. In the proceedings you will find that the Parliament met at such and such an hour and after 'prayer' began their proceedings. Theirs is not a communal State too. In Ireland, as also in many other places, God is not forgotten. I am indebted to my Friend Mr. Kamath who introduced this word 'God' here. We worship God and our faith must be recorded. India believes in God and therefore the Indian State must remain a State of God. It must be a godly State and not a godless State. This is our meaning of secularity. With these words I move my amendment.

Shri R. K. Sidhwa : I do not move amendment No. 1147.

Kazi Syed Karimuddin (C. P. & Berar : Muslim): Mr. Vice-President I move: That in the Form of Oath in article 49, the words "and that I will devote myself to the service and well-being of the people of India" be deleted. My reason for the deletion of these words is that the very purpose of taking an oath or making an affirmation is that certain obligations are created in law. If there is a breach of this oath, then there is the impeachment of the President or the Vice-President. As a citizen of India, of course, a person will be devoted to the service of the people. Therefore it is not necessary that in the oath you must have this pious declaration. You will see that in the form of oath prescribed in the American Constitution, the latter part of this oath is not mentioned. Therefore my submission is that the latter portion should be deleted as it is only a pious declaration.

[Kazi Syed Karimuddin]

In regard to the amendment moved by Mr. Kamath I wish to say a few words. I was very glad that he held a brief on behalf of God and pleaded that God should not be banished from our Constitution. My submission is that if his amendment is accepted we will be excluding those people who have no faith in God at all. There are so many people in this country and elsewhere who have no faith in God. I may cite the example of the Jains. They do not believe in God and there are many who are atheists. If Mr. Kamath's amendment is accepted you will be excluding those people from becoming the President. If his amendment is accepted you will be creating an obligation on people that they should have faith in God.

Shri H. V. Kamath : Mr. Karimuddin has not seen my amendment. If he has seen it, he has not understood it.

Kazi Syed Karimuddin : The monopoly of understanding is with you only. *(Laughter)*

Shri H. V. Kamath : Sometimes.

Mr. Vice-President : Do you want to explain it? Yours is an amendment to the amendment of Mr. Karimuddin.

Kazi Syed Karimuddin : My submission is that in a secular State, when you are framing a Constitution, why should there be a classification of people at the time of taking the oath? Whether they believe in God or not, should not be indicated. It is contrary to the spirit of democracy that any insertion of God should be made in the Oath in the Constitution. My submission is that non-mentioning of God is not banishing Him.

Mr. Naziruddin Ahmad : I may point out, Sir, by way of clarification, that Mr. Kamath's amendment does not insist that the President should have real faith in God. According to it, he has merely to begin with the name of God.

Prof. K. T. Shah : Sir, I beg to move:

"That in article 49, after the words 'well-being of the people of India' the following be added:

'and will throughout the term of my office as such President so conduct myself as to leave no ground for any charge of seeking to promote my own interest or my family's aggrandisement, and that in any act I may have to do or appointment I may have to make, I shall consider only the interest of the public service and of the country collectively.' "

I am afraid this is rather a delicate matter. But there is an old adage that fools rush in where angles fear to tread. As I have been qualifying myself very highly and frequently for the former title, I am afraid I must keep to the role even in this delicate matter.

The oath of the President, apart from other things, must include in my opinion, an assurance and an affirmation that he will only look to the interest of the country, to the service of the people; and not think of his own interest or of the aggrandisement of his family in any act that he may have to do and in any appointment that he may have to make.

It is indeed a pity, Sir, that in this House there are, so far as I can judge, such few voices being raised in support of that purity of the governmental machinery which has been taught to us as the inevitable consequence of what was just described as Ram Rajya in this country. Sir, I must, at the cost of becoming wearisome by repetition, insist that those ideals which have been professed during our struggle against the Imperialist outsiders must not merely be copy-book maxims; they must be living realities, and be implemented and must become an actual fact of daily life, agreed to by everybody in the country from the highest to the lowest.

The symbol of that, I further submit, can nowhere be more vividly insisted upon than in this part of the oath of the President, that, during his term of office, he shall so conduct himself as to leave no ground for any suspicion of seeking to promote his own private interests, or secure the aggrandisement of

his own family, in any act he may do or in any appointment he will make; but that he will always and entirely consider the interests of the country collectively as a whole and not of any individual.

It is a pity, also Sir, that it has become necessary to emphasise what on the face of it seems to be such an obvious proposition. It would not have been necessary to include it, if only we had not bitter experience of people forgetting their own professions, of people forgetting the great principles that they themselves had uttered. For, once they had acquired power, they suffered from intoxication of power and position and allowed it so freely to mount to their heads that they forget what they had stood for throughout their lives, and violate in deed and in fact everyday what they had professed themselves.

Sir, power is a dangerous drug. It is new in this country and I am told—I have no experience of my own—that new wine is much more heady than old. I do think that whatever may have happened in the past, in the new Constitution we must see to it that the head of the State and the principal officers working under him for the benefit of the country, are free from any suspicion, any charge, any ground even to believe that they, in their several acts, in their several offices or appointments, have thought of anything but the good of the country according to their light.

Sir, I know that in human affairs some ground can always be found for such fears, and where good ground is not found, rumour may be busy imagining or fabricating things which are not at all there, or exaggerating things which may be only seedlings. I am also aware, Sir, that man is liable to err, with the best of intentions. The provision that I am seeking to make by this amendment is not intended to punish such errors made in good faith, in ignorance, or in the absence of proper light. What I am seeking to guard against by this amendment is a deliberate misuse or abuse of office and power, so that, instead of the interests of the country collectively, being attended to by those in power or authority, only the family interests or the individual's own interests may be promoted.

This has happened in other countries; and notwithstanding our heritage, notwithstanding our insistence upon popularising God even in such matters, we are liable, I take it, to repeat other people's follies as well. The mere presence of the name of God, I am afraid, will not be an insurance against the frailty of man. That being so, I want it to be clearly reaffirmed, I want it to be reinforced that those who hold the trust, the highest office under the people, and have in their power, in two, three or four years, to mould the destinies of the country, shall, atleast to their own judgment and according to their lights, be free from any accusations of the kinds I have contemplated in this amendment.

It is invidious, Sir, to mention specific instances. It is unnecessary, Sir, to quote examples of this kind which most of us may know. As the saying goes, in my part of the country at any rate, while everybody knows the name of his wife, none will utter it. That being so, I certainly am not prepared to violate that maxim, and mention names which may or may not be accurate. But I think there ought to be no difference of opinion that the head of the State should be free from any such charges. Hence, even if we may not have an absolutely destitute person as President, or a person without any family entanglements, a person without any connections or dependents, even then we should insist upon such safeguards as will see to it that human frailty is not reinforced by individual temptation, or constitutional laxity, and permit things which should never be done. The human brain is ingenious and lawyers there are who will reinforce that ingenuity. Cases are not wanting in the past when persons deliberately misinterpreted or violated the spirit of their own oath, if not the letter. I remember the case of a former Lord Chancellor of

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England who had in his power vast patronage of appointments to which he appointed only his own relatives. When this scandal grew to such an extent that only his sons, nephews and grandsons had any chance of appointment at all, the House of Lords appointed a Committee of Inquiry to find out whether or not such charges were well-founded. Appearing before the committee the Lord Chancellor—I think it was Lord Elden—had the temerity to say, before this Committee, quite solemnly "I have taken *an oath* that I will appoint only those whom I know to be so and so. And whom do I know better than my sons or nephews? He forgot to add that it was only those whom he knew to be qualified that he was to appoint, and not only those whom he only knew. That was a difference and a distinction which his learned Lordship did not care to remember at the moment.

The case is also very well known of Queen Victoria, who, at the time of the disestablishment of the Anglican Church in Ireland in 1869, brought out her Coronation Oath to show that she had taken an oath to uphold and maintain the Church of England. She had forgotten that she had taken an oath only to maintain the Church of England *in England,* but not necessarily all over the world, or even whole of the United Kingdom. In this way, the opposition of the Queen was got over.

My point is that even though it may be possible to abuse or deliberately misinterpretation misapply the terms of the oath, the oath in itself is a guarantee of some sort. I know it is not an absolute knave-proof guarantee; but it is a guarantee of some sort that those who hold such offices will always be reminded of their obligations, of their promises that they will so conduct themselves as to be free from any suspicion of the kind that is implied in many acts or utterances of those who have high offices in their power as a gift. As I said before, this matter is so self-evident and so important that there ought to be no opposition to a proposition like this. I hope the House, true to the traditions which it has been upholding, will accept my amendment.

Shri R. K. Sidhwa : Mr. Vice-President, Sir, this is a simple clause relating to the oath to be taken by the President. Sir, I am a firm believer in the existence of God and also in religion but I must say, Sir, that it will not be proper to insert the word 'God' in our Constitution simply because we invoke the blessings of God. God is everywhere if you really believe in Him. God is here in this House. He is omnipresent. If you really believe in the existence of God, it is no use merely putting it in the Constitution and taking consolation from it. There is no use the President taking his oath in the name of God and then do something quite contrary to the teaching of God. There is another factor to which I object; I do not share the view of my Friend, Mr. Karimuddin that in a secular State the word 'God' cannot come in. A secular State does not mean that an individual cannot believe in God. That theory is certainly not tenable to any reasonable man, but I do believe, Sir, that day in and day out, we do say that religion shall have nothing to do with our Constitution, and that religion is our private concern. I certainly believe in God and I think religion is my own business. It is nobody's business to tell me in what respect and in what method you believe in God and you approach your religion. In India, we feel that God is a symbol of religion; and in the name of religion, we know, Sir, how disastrous things are happening in this country; each community believes in God in his own way. The belief of the Hindus is quite different, that of the Muslims in quite different and so also that of the Parsis and the Christians. I, therefore, do not want that our Constitution should in any way be marred by the word "religion", but if my friends have a consolation in bringing in God, and that is to their satisfaction, let them have it. I only want to say, Sir, that it would have been better if the word 'God' and the religious point of view were avoided. What I would really have

preferred is that the public should have been remembered by the President, when he takes the oath. He should have stated that in the presence of the people.....

Mr. Vice-President : Is that the amendment you are suggesting?

Mr. R. K. Sidhwa : I am only stating that from the Irish Constitution. There the President takes the oath in the name of the people of the whole country. He says: "I swear before the People of the whole country" and at the end of the oath states "if I break my oath, I will submit myself to the severest punishment from the State." I have heard this morning sermons being preached that the President should be a man of integrity, sincerity and honesty, and the resolution of the Jaipur Congress was quoted. But the President does not say "I shall be subject to the severest punishment if I do not carry out the injunctions that have been imposed upon me and I make that solemn affirmation before the people of this country".

Mr. Vice-President : I really find that you are moving amendment No. 1147 quoting the very words.

Mr. R. K. Sidhwa : These are the words of the Irish Constitution, Sir.

Mr. Vice-President : I do not deny that, but you are quoting from the amendment which you did not want to move.

Mr. R. K. Sidhwa : This is not my amendment and if it is so, I wish to state that I have borrowed it from another Constitution just as so many things have been borrowed by so many eminent persons in this House.

Mr. Vice-President : Not at all; I am merely suggesting that you are quoting the amendment which you did not move, *i.e.,* Amendment No. 1147.

Mr. R. K. Sidhwa : I bow to your ruling. I can not challenge what you say. I merely stated that it is merely a reproduction of the Irish Constitution.

Mr. Vice-President : It is certainly an amendment which stands in your name.

Mr. R. K. Sidhwa : I only wanted to say that the oath should be one appealing more to the people of this country, for whose interest and well being, we are preparing this Constitution.

Shri M. Thirumala Rao (Madras : General): Mr. Vice-President, Sir, I do not know why the light goes off as soon as I approach the mike. All of us are in need of greater light, especially after my honourable Friend, Mr. Sidhwa's speech, who has protested too much by God and who wants to eliminate God from the Constitution. Sir, it is strange how the honest and god-fearing people who have drafted this Constitution have got so much fear of God that they have altogether banished Him from the Constitution ! Sir, I want to bring to the notice of this House that during the last 30 years, the Congress struggle has gone on on definite lines of ideology, led by one of the greatest men of the world. Truth and non-violence have been our weapons and they have been uniquely used by large masses of people and during all these years, the people who fought for that freedom of this country have got a concept of what that freedom should be like. Mahatma Gandhi is worshipped in this country not because he is merely a political leader, but because he is a gentleman, a person who has personified in himself the spirit of the nation that has survived the onslaught of many invasions from far-off countries. Civilizations of the world have gone before us; the civilizations of Egypt and Babylon have perished, but the civilization of India has survived all these centuries, because there is something in the very make-up of this nation, which has got its roots deeply inspiritual emotion. If you eliminate that spiritual emotion, then India has no right to exist and would have ceased to exist long ago. All of us have fought under the able guidance of Mahatma Gandhi and Mahatma Gandhi has enthused and inspired us with definite ideals of the

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governance of our country. Unfortunately as irony would have it, the drafting of this Constitution has fallen into the hands of those people whose lives have not touched Mahatma Gandhi's ideology at any point except with the single exception of my honourable Friend, Mr. Munshi there.

Shri K. M. Munshi (Bombay : General): Thank you, Sir.

Shri M. Thirumala Rao : Therefore it is a disappointment that we have not really understood the genius of our people. We have always said, wherever we have gone, that the very basis of our life is embedded in religion. Go to the western countries. There the King stands for the country and God. The King stands for the religion of the community and you have seen the western universities. Oxford and Edinburgh—and all the older universities that provide the tradition in the oldest abbeys that are built along with the universities—these ancient cities of learning have given the first place to religion or the spiritual conduct of the nation. Therefore, what I suggest is this: that this Constitution is going to safeguard the real genius, the real civilization of this country. How are they going to safeguard it? A provision has been made for atheists. The Chairman of the Drafting Committee who has got such a soft corner for atheists, who are a handful in this country, should have shown greater enthusiasm for safeguarding the spiritual heritage of the vast masses of this country ! Such of those who have gone to Jaipur would have witnessed the real life of the nation is still alive with them. Thousands and thousands of people with genuine emotion in their hearts and tears welling in their eyes were looking at either Sardar Patel or Pandit Nehru, as the real symbols of the nation. I had occasion to watch a handful of Sikhs; they were telling us—about fifteen or twenty of them:

"Hamko Darshan Pura Hogia."

Where does the word 'Darshan' come from? It is a word of religion. If they were looking at our leaders, it was not because they have got a regimented press and regimented armies behind them. Mahatma Gandhi was great not because of the regimented press, state and the armies to support him like the dictators, Stalin, Hitler and Mussolini of the West. The moment you want to banish God from your daily life, as reflected in the Constitution, that moment you have no right to exist. They in the West have banished God from the regimented State of Russia; they have forgotten God in the regimented State of Germany and Italy and you have seen the fate that has overtaken them. Therefore, what I say is if you want to reflect the real genius of our people, let us stand by God; God as such is such a wide term; God is an all embracing term. It is a common noun to which a proper name is given by each religion.

I have seen the amendments of my honourable Friends, Prof. K. T. Shah and R. K. Sidhwa. You want that a man should take the oath, affirming that he will behave properly, that he will be honest and that he will be everything. All these things are contained in 'God'; much more is contained in that one word 'God' by which you are asked to swear and you say that you will not define the name of God in discharging you public duty. Therefore, Sir, the amendment which has been so ably moved by my honourable Friend Mr. Kamath really reflects the genuine genius of our country. I am sure this country and this Constitution will have to undergo a thorough transformation before it finally settles down to evolve this nation as one of the greatest nations of the East, to uphold the real culture of this country as a leader of the world. Therefore, Sir, this amendment has not come a bit too late and I am glad the party has accepted it.

An Honourable Member : Which party has accepted?

Shri M. Thirumala Rao : I think it is understood what I mean by 'party'. I hope the House will unanimously accept this amendment.

Shri K. M. Munshi : Mr. Vice-President, Sir, I think the honourable Member who spoke against my honourable Friend Mr. Kamath's amendment got that

there was an amendment by my honourable Friend Mr. Mahavir Tyagi which leaves it free to those who do not believe in God to affirm solemnly the words of the oath. The only point before the House is, when a person believes in God, is he to swear by God or swear by somebody else? The amendment of my honourable Friend Mr. Kamath as amended by my honourable Friend Mr. Mahavir Tyagi's amendment fulfils the true criterion that when a man actually believes in God, he must swear by Him and not merely swear without His name or in the name of somebody else. We know in the olden days people used to swear by the cow's tail or by the *peepul* tree. The idea is that swearing must be in the name of God, in the most solemn belief that a man possesses.

My friend who spoke last was pleased to refer to me as one who was closely connected with Mahatma Gandhi out of the Members of the Constituent Assembly. I do not know whether it is true. But, I myself have felt—I am free to confess—that we are emphasising the absence of God in this Constitution too much. My opinion was that we should have His name in the Preamble; but the general opinion was different. But when it comes to swearing, I see no reason why any person should fight shy of the name of God. I fail to understand how this offends against the conception of a secular State. A secular State is used in contrast with a theocratic Government or a religious State. It implies that citizenship is irrespective of religious belief, that every citizen, to whatever religion he may belong, is equal before the law, that he has equal civil rights, and equal opportunities to derive benefit from the State and to lead his own life; and nothing more. A secular State is not a Godless State. It is not a State which is pledged to eradicate or ignore religion. It is not a State which refuses to take notice of religious belief in this country. As a matter of fact, every State recognises this. We have done it in passing the fundamental rights with regard to religion. Religion is the richest possession of man and even under this secular State, a person having a religious belief will be fully entitled to it in the way that he likes. Any State that seeks to outlaw God, will very soon come to an end.

We must take cognisance of the fact that India is a religious-minded country. Even while we are talking of a secular State, our mode of thought and life is largely coloured by a religious attitude to life. When Mahatma Gandhi died, the State procession which carried him to the funeral ground ended in religious ceremonies. His ashes were immersed in a hundred rivers of India. I may mention to you my own experience. When the ashes of Mahatma Gandhi were taken to be immersed in the Sangam in Hyderabad, the Hyderabad State, as it then was, officially joined in it. Over 200,000 Muslims joined in it. Religious ceremony was performed at the Sangam according to the Hindu style in a congregation which consisted of Hindus, Muslims, Christians and members of other communities. That shows that the subconscious mind of India is highly religious. We should not be ashamed of it. And it will be a day of disaster for India if, by some legislative trick, our State is converted into an irreligious, Godless State. We need not fear that a secular State is inconsistent with a religious mind among the people.

As an honourable Member has said before, if India has anything to give to the world, it is the outlook on life deeply imbued by spirituality, by awareness of God in our midst. If Indian culture has any meaning at all, it is that there is God and that a man can rise to the dignity of divinity in this very life if he becomes an instrument of God. The lever with which Mahatma Gandhi created the present nationalism and won for us a free State was the religious-mindedness of India. This mind will continue to be religious, and the State in India cannot be secular in the sense of being antireligious. It does not mean that a man who believes in God should not swear by Him when pledging himself to the service of his country. This is my submission on this point.

Mr. Tajamul Husain : Mr. Vice-President, Sir, every religion says that nothing can be done without the wish or order of God. Therefore, the logical conclusion is that my honourable Friend Mr. Kamath came to propose the name of God by the wish of God. And I have come here also by the wish and order of God to say that he does not want His name here at all. I have come here to oppose the amendment of Mr. Kamath; I will give my reasons later on.

First of all, I want that article 49 should be deleted from this Constitution. What is the use of having an article which says that the highest officer, the President, when he becomes President should take an oath or affirmation? What is the necessity? My honourable Friend Dr. Ambedkar, who is an eminent lawyer, knows that 99 per cent of the witnesses who go into the witness box and take an oath or affirmation mentioning Almighty God, go to tell the untruth. *(Interruption)*

Mr. Naziruddin Ahmad : Witnesses never take oath in the name of God unless they specially agree to. *(Interruption)*

Mr. Vice-President : It would be better if honourable Members do not interrupt.

Mr. Tajamul Husain : I thought the Honourable Mr. Naziruddin Ahmad who is a lawyer from Burdwan—I am told he is a very good criminal lawyer—knew that when a witness goes to the witness box he says:

"Allah ya Bhagwan ko nazir ho kar boltae ham."

He says, "in the name of God, I express....."

I was saying that article 49 should be deleted. I can move it without sending it in writing, because I oppose the whole thing. I say, Sir, that this Constitution is made by us—human beings. We cannot say this is a perfect Constitution. Nobody can say that. The word of Almighty is perfect and so why have the name of God in an imperfect Constitution? Why make Him cheap and why bring Him here? Sir, this constitution is going to be translated and the translation will come before the House and will be passed. What translation are you going to have? Whose name are you going to have? We all know that God is one but we have created thousands of Gods and your God is different from my God and Mr. Sidhwa's is different from someone else's. Whose God are you going to have? Why should Mr. Sidhwa take the oath in the name of some God which is not the name of his God? Supposing it is translated and the word 'Bhagwan' is there, can you compel the Parsee or Christian or a non-Hindu to say that when he becomes a President? Either you donot want him to become the President or if he does, he cannot swear that. Why have His name? We will worship Him in any way we like in our homes. I do not want to repeat the argument of Mr. Sidhwa. He has spoken very ably on this matter. There are Indians who do not believe in God at all. How are they going to take this oath? With these words I move:

"That article 49 be deleted."

Rev. Jerome D'Souza (Madras : General) : Mr. Vice-President, it is not without some emotion that I rise to speak a few words on this amendment of Mr. Kamath. I am sure my honourable Colleagues in this House will have no doubt as to the purport of what I am going to say here. I have made references to this solemn subject more than once before this House, and so it is not without satisfaction that I notice and wholeheartedly approve of the suggestion or the amendment of Mr. Kamath. Nevertheless Sir, accepting and welcoming this amendment, I cannot help feeling that far too great a significance to the "official", to the "Constitutional" aspect of it, has been given to this very moderate suggestion, by some of the speakers that have preceded me. If I may be permitted to say so, our honourable Friend Mr. Munshi struck the right note and put matters in the right proportion. What does this

amendment propose to do? Does this amendment commit the Constitution or the Constitution-making body here to a solemn and unequivocal profession of belief in God and in God apprehended by a concept clearly defined and unanimously held? If it were so, objection might have been raised to it, but no such thing is implied here. What is asked here is this: when the most honoured position in our country is being given by the choice of this country to a man of outstanding personality, ability and character, we want him to come to the threshold of that office and to make a promise of service to the country in the manner that is most binding and most solemn that we can think of; we want him to draw his strength from the deepest fountains and springs of action within him for the service of his country. And knowing that the vast majority of our countrymen, Hindus or Muslims or Christians or Parsees or Sikhs draw their moral strength from trust in the Supreme Being, it gives to this chosen, this exceptional man the option of promising service to the country in that Sacred Name if he so desires. We want to give him the opportunity of making what is in his eyes the most solemn and the most binding promise. We do not impose it upon him. If there is someone who for some reason or other does not want to take that particular form, an alternative form is suggested to him. All that the Constitution-makers and we here imply by this amendment is that we accept the fact that in our country the vast majority of men are believers in God and that almost certainly, anyone who would come to this exalted officer would be moved to fulfil the functions of that office most faithfully if he promised to do so in the name of Almighty God. Taking this for a fact, we merely register that fact but make no corporate profession. I do not see therefore why this should be construed as opposed to the spirit of our Secular Constitution. Secondly, even a Secular Constitution, as Mr. Munshi pointed out, is not a Godless Constitution. It is not in opposition to the very notion of God. Only it makes no choice as between this or that particular profession, or religious section, but it does look with sympathy upon the convictions, the feelings, the desires, the hopes and aspirations of the entire people. It would not be true to the spirit of those people if it ignored this profound reality, the belief of all our people in God. To my honourable Friends who asked us, 'Have we got a uniform and clear notion of what God is before we permit the introduction of this word in our Constitution?' May I say, 'Is there anyone who is not aware in a broad and general way of what we mean by this word?' Is it necessary to enter into the discussions of Philosophers and Metaphysicians and to understand their subtle distinctions between this or that concept before accepting this term in so far as it stands for the Supreme Spiritual Reality that is behind this material and transitory world? We are making here an appeal to the eternal and everlasting foundation of all reality behind this passing, this temporal world. And in appealing to that, we are all one, Christians, Hindus, Muslims, Parsis and Sikhs, all of us knowing that above and behind what we see in time and in space, there is something that is unchangeable, Something that is eternal,—one that works for justice and peace and goodness and harmony. Our deepest instincts of brotherliness, of order, of justice, of law, of progress, are founded upon and inspired and sustained by that conviction and that Reality. My honoured colleagues will, therefore, accept this broad and general assumption as sufficient for the admission of this amendment, and permit us to include it as one of the forms by which the President will take office. In doing so, we are not cheapening the concept of God. We are not imposing it upon all and sundry, and at all times and in all places. But here, on the threshold of a most sacred and most solemn duty, the chosen leader of our country, presumed to be almost always a believer in God, is asked, if he is a believer, to promise in His sacred Name, and with all the strength of his soul and the force of his convictions to fulfil the duties that are imposed upon him. Can we doubt for a moment, that if we word that affirmation in that way, all that is deepest in him will respond to it, and

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that he is bound to fulfil that duty in a manner which he will not be inspired to do if a less compelling forms were used?

I therefore, request the House to waive all objections that may be based upon other considerations or scruples, and accept this amendment which will leave the fundamental secular character of the State rightly understood untouched, and to give this amendment the grace of general acceptance. By this, people of the country will certainly not be persuaded or obliged to believe that we are all here making a solemn profession of this or that particular religion, but they will at least understand that the law-makers and the Constitution-makers realise that this country and its people have a strong religious faith, and that, realising it we here make an appeal to a principle of action and a motive of nobility which are bound to be responded to, and bound to do good to the country. Therefore, Sir, with all my heart, I support this amendment of my friend Mr. Vishnu Kamath and request this House to accept it unanimously. *(Cheers)*

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am prepared to accept the amendment moved by Mr. T. T. Krishnamachari, that is No. 1144, and also amendment No.1146 by Mr. Kamath, as amended by Mr. Tyagi's amendment.

With regard to the first amendment, that moved by Mr. T. T. Krishnamachari, not much argument is necessary. His amendment is certainly better than the amendment that stood in my name.

With regard to the second amendment No. 1146, in view of the fact that I am prepared to accept it in the form amended by Mr. Tyagi, I do not think I am called upon to enter into the merits of the question. But perhaps, it might be as well that I should say a few words as to why the Drafting Committee itself did not introduce in its original draft, the words "in the name of God." Sir, I do not think that this matter was considered fully by the Drafting Committee and therefore I cannot advance any adequate reason why they did not originally put in those words.

So far as I am concerned, I feel that this was a matter which required some consideration. If the House will permit me, I would express my own views on the matter. The way I felt about it is this. The word "God" so far as my reading goes, has a different significance in different religions. Christians and Muslims believe in God not merely as a concept, but as a force which governs the world and which governs, therefore, the moral and spiritual actions of those who believe in God. So far as Hindu theology was concerned, according to my reading—and I may be wholly wrong, I do not pretend to be a student of the subject—I felt that the word "Eswara" or to use a bigger word, "Parameswara" is merely a summation of an idea, of a concept. As I said, to use the language of integral calculus, you put sums together and find out something which is common, and you call that "S" which is merely a summation. There is nothing concrete behind it. If in Hindu theology, there is anything concrete, it is "Brahma" "Vishnu", "Mahesh", "Siva", "Sakti." These are things which are accepted by Hindus as forces which govern the world. It seems to me, that it would have been very difficult for the Drafting Committee to have proceeded upon this basis and to have introduced phraseology which would have required several underlinings—God, below that Siva, below that Vishnu, below that Brahma, below that Sakti and so on and so on. It is because of this embarrassment that we left the situation blank, as you will find in the Drafting Committee.

Shri A. V. Thakkar [United State of Kathiawar (Saurashtra)]: But there is One above all.

The Honourable Dr. B. R. Ambedkar : I am, however, quite happy that this amendment has been introduced. Now, some Members have raised objections to the amendment. They are afraid that the introduction of the word God in the Constitution is going to alter the nature of what has been proclaimed to be a secular State. In my judgment, the introduction of the word God does not raise that question at all. The reason why the word God is introduced is a very simple one. The Constitution lays down certain obligations upon the President. Those obligations are obviously divisible into two categories, obligations for which there is legal sanction and legal punishment provided, and there are obligations for which there are no legal rules provided, nor any punishment is provided. Consequently, in every constitution this question always arises. What is to be the sanction of such duties, such obligations, as have been imposed upon a particular functionary for which it is not possible by law to provide a criminal sanction, a penalty? It is obvious that unless and until we decide or we believe that these moral duties for which there is no criminal or legal sanction are not mere pious platitudes, we must provide some kind of sanction. To some people God is a sanction. They think if they take a vow in the name of God, God being the governing force of the Universe, as well as of their individual lives, that oath in the name of God provides the sanction which is necessary for the fulfilment of obligations which are purely moral and for which there is no sanction provided.

There are people who believe that their conscience is enough of a sanction. They do not need God, an external force, as a sentinel or a watchman to act by their side. They think a solemn affirmation coming out of their conscience is quite enough of a sanction. If honourable Members have read the history of this matter which is embodied in the struggle between Mr. Bradlaugh and the House of Commons, they will realize that as early as 1880 or so, Mr. Bradlaugh insisted that he was a perfectly moral being, that his conscience was quite active, and that if he took the oath his conscience was enough of a sanction for him to keep him within the traces, so to say. After a long long struggle in the House of Commons, in which on one occasion Mr. Bradlaugh was almost beaten to death by the Sergeant-at-Arms for trying to sit in the House of Commons and taking part in its proceedings without taking the oath to which he raised objection. Mr. Gladstone ultimately had to yield and to provide an additional or alternative form which is called solemn affirmation. Therefore the issue that is involved in this amendment has nothing to do with the character of the State. Whether it is a secular or a religious State is a matter quite outside the bounds of the issue raised. The only question raised is whether we ought not to provide some kind of a sanction for the moral obligation we impose on the President. If the President thinks that God is a mentor and that unless he takes an oath in the name of God he will not be true to the duties he assumes. I think we ought to give him the liberty to swear in the name of God. If there is another person with whom God is not his mentor, we ought to give him the liberty to affirm and carry on the duties on the basis of that affirmation.

I therefore submit that the amendment is a good one and I am prepared to accept it.

Mr. Vice-President : You have nothing to say on the amendments moved by Mr. Karimuddin and Prof. Shah?

The Honourable Dr. B. R. Ambedkar : No, Sir.

Mr. Vice-President : The question is:

"That in article 49, after the words 'Chief Justice of India' the words 'or, in his absence the senior-most Judge of the Supreme Court available' be inserted."

The amendment was adopted.

Mr. Vice-President : The next amendment to be put to the vote is No. 1146 But this is identical with Mr. Mahavir Tyagi's amendment and if Mr. Kamath agrees I shall put this one to the vote.

Shri H. V. Kamath : I have no objection to Mr. Tyagi's amendment, as there is a mere verbal difference between his and mine.

Mr. Vice-President : Then I shall put Mr. Tyagi's amendment, which is an amendment to amendment No. 1146, to vote.

Shri H. V. Kamath : No, Sir. My amendment as amended by Mr. Tyagi should be put to the vote.

Mr. Vice-President : Yes, yes: that is understood. I did not know that you were such a stickler for forms; You break so many forms systematically.

The question is:

"That in article 49 for the words 'do solemnly affirm (or swear)', the following be substituted:—

'do swear in the name of God / solemnly affirm'."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in the form of Oath in article 49 the words, 'and that I will devote myself to the service and well-being of the people of India' be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in article 49, after the words 'well-being of the people of India' the following be added:—

'and will throughout the term of my office as such President so conduct myself as to leave no ground for any charge of seeking to promote my own interest or my family's aggrandisement, and that in any act, I may have to do or appointment I may have to make, I shall consider only the interest of the public service and of the country collectively'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 49 as amended, be adopted."

The motion was adopted.

Article 49, as amended, was added to the Constitution.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 28th December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 28*th December* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—(*Contd.*)

Article 50

Mr. Vice-President (Dr. H. C. Mookherjee) : We may resume discussion of the Draft Constitution. The motion before the House is :

"That article 50 form part of the Constitution."

Shri Gopikrishna Vijayavargiya [United State of Gwalior-Indore-Malwa (Madhya Bharat)]: May we know up to what date the Assembly will continue if this can be ascertained, so that we may fix up our own programmes?

Mr. Vice-President : I shall be in a position to let the honourable Member have the information at a later date—by the end of this week or early next week.

(Amendment No. 1150 was not moved.)

Looking to the amendments I find that the first part of amendment No. 1151 and amendment No. 1152 are of similar import. Amendment No. 1152 which stands in the name of Mr. Karimuddin may be moved.

Kazi Syed Karimuddin (C. P. & Berar : Muslim): Mr. Vice-President, I move:

"That in clause (1) of article 50, after the words 'for violation of the Constitution' the words 'treason, bribery or other high crimes and misdemeanours,' be inserted."

This does not require any detailed speech. Under article 50 it is mentioned that there can be an impeachment of the President in regard to the crime of violation of the Constitution. In the American Constitution the grounds I have mentioned in the amendment are also mentioned. In my opinion it is very necessary that for impeachment of the President all these grounds should be embodied under article 50.

Mr. Vice-President : Does Prof. K. T. Shah want the first part of his amendment No. 1151 to be put to vote?

Prof. K. T. Shah (Bihar : General): I want to move it.

Mr. Vice-President : It cannot be moved. But I can put it to vote.

Prof. K. T. Shah : All right.

Mr. Vice-President : Prof. Shah may move the second part of amendment No. 1151.

Prof. K.T. Shah : I beg to move:

"That in clause (1) of article 50, for the words 'either House' the words 'the People's House' be substituted."

Is this the part I am allowed to move, Sir?

Mr. Vice-President : Yes.

Prof. K. T. Shah : In bringing this amendment before the House, I am following the usual practice that if impeachment is to be made, it should be by the People's representatives and not by the other House, the Council of States. The Council of States would be composed of people not directly elected by the people. There may be some appointed elements in that House; and that Body may consist of representatives of units and interests rather than of the people themselves.

Now here are offences and the trial thereof, as against the Head of the State, which can, in my opinion, be only done by the House of the representatives of the people. After all, it is the people who are the sovereign in the scheme of the Constitution that this Draft presents, and that I have accepted. Under that scheme it should be the real sovereign, the people, who should and might, through their representatives, be empowered and entitled to try for such offences the Head of the State.

I think no further arguments are necessary from me to make it clear even to those who are fond of imitating others that this amendment only conforms to the existing practice in America and the West. This amendment, at any rate, cannot be opposed on that ground.

Mr. Vice-President : There are several amendments to this amendment. The first one is amendment No. 30 in List I of the Fifth Week. As the mover (Pandit Thakur Dass Bhargava) is absent, the amendment is not moved. The next two amendments, *viz*., 31 and 32 also stand in his name. They are also not moved as the Member is absent.

(Amendment No. 1153 was not moved.)

Amendment Nos. 1154 and 1155 are disallowed as being merely verbal amendments.

Amendment Nos. 1156 and 1160 to 1165 are of similar import. Of these, amendment No. 1156 seems to be the most comprehensive one and may therefore be moved. It stands in the name of Shri Brajeshwar Prasad. The Member is absent and therefore the amendment is not moved.

The next comprehensive amendment is No. 1163 and may be moved. As the Member is absent it is not moved.

Then I allow Shri Shankarrao Deo to move amendment No. 1160.

Shri Shankarrao Deo (Bombay : General): Mr. Vice-President, I move the following amendment which stands in my name:—

"That in sub-clause (a) of clause (2) of article 50 for the words 'thirty members', the words 'one-fourth of the total membership of the House' be substituted."

The necessity for this amendment is so obvious that I need not take the time of the House by adducing arguments in support of it. The impeachment charge is so grave that if it is proved, the President who is the head of public life and the dignity of the State will suffer. So, if anybody thinks of preferring this charge, he must do so realising the seriousness of the charge, and there must be a sufficient number of representatives coming forward to support that charge. In view of the seriousness of the step proposed, the number thirty is very small. So I suggest that at least one-fourth of the total number of members of the House should come forward to prefer such a serious charge against the President who represents the dignity of the State. I hope the House will accept this amendment.

Mr. Vice-President : Does the mover of amendment No. 1161 want it to be put to vote?

An Honourable Member : No, Sir.

Mr. Vice-President : Does Kazi Syed Karimuddin want his amendment (No. 1162) to be put to vote?

Kazi Syed Karimuddin : Yes, Sir.

Mr. Vice-President : Prof. Shibbanlal Saksena may move his amendment No. 1164.

As the Member is not in the House, the amendment is not moved.

Amendments Nos. 1157, 1158 and 1159 are of similar import. Shri Jaspat Roy Kapoor may move amendment No. 1157.

(The amendment was not moved.)

Amendment No. 1158 standing in the name of Shri B. M. Gupte may now be moved.

Shri B. M. Gupte (Bombay : General) : Mr. Vice-President, I beg to move :

"That in sub-clause (a) of clause (2) of article 50, for the words 'after a notice' the words 'at least after 14 days notice' be substituted."

Sir, the provision as it stands today mentions the notice, but specifies no period for it. If we refer to articles 74, 77 and 158 which deal with the removal of the Deputy Chairman, Speaker, the Deputy Speaker of Parliament, and Speaker, Deputy Speaker of the State Legislature, we will find that everywhere 14 days' notice is provided. There is no reason why the same period should not be laid down here. I have therefore suggested in my amendment that 14 days' notice should be given. I hope the House will accept it.

Mr. Vice-President : Does the Member who has given notice of amendment No. 1159 (Mr. Mohd. Tahir) want that it should be put to vote?

Mr. Mohd. Tahir : (Bihar : Muslim) : Yes, Sir.

Mr. Vice-President : Amendments Nos. 1166, 1167, 1168 and 1169 are of similar import. Amendment No. 1167 may be moved. It stands in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I move :

"That in sub-clause (b) of clause (2) of article 50, for the words 'supported by' the words 'passed by a majority of' be substituted."

Mr. Vice-President : Amendment No. 1166 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam.

Mr. Mohd. Tahir : I want to discuss it. My amendment is quite different from Dr. Ambedkar's. They are not the same.

Mr. Vice-President : It can be put to the vote. You can take part in the general discussion and make your point then. That will be much better. I think.

Amendment No. 1168 standing in the name of Mr. Naziruddin Ahmad. Do you want it to be put to vote?

Mr. Naziruddin Ahmad (West Bengal : Muslim): Yes, Sir.

Mr. Vice-President : It seems it is identical with Dr. Ambedkar's amendment. Then, amendment No. 1169 standing in the name of Kazi Syed Karimuddin. Do you want it to be put to vote?

Kazi Syed Karimuddin : No, Sir.

Mr. Vice-President : The next in my list is amendment No. 1170 standing in the name of Kazi Syed Karimuddin.

Kazi Syed Karimuddin : Mr. Vice-President, I move:

"That the following new sub-clause be inserted after sub-clause (b) of clause (2) of article 50:

'(c) the meeting shall be presided by the Chief Justice of the Supreme Court whose decision on the admissibility of evidence shall be final.' "

There is no mention in article 50 as to who would preside at the meetings or sittings for the impeachment of the President. Therefore I have made an attempt to add a sub-clause in which it is laid down that the meeting or sittings shall be presided over by the Chief Justice of the Supreme Court. I suppose that if this amendment is not accepted, then either the Speaker or the Vice-President will have to preside at such meetings. Obviously there is an objection to the Vice-President as he is likely to succeed if the President is removed. The Speaker also should not be allowed to preside at these meetings because generally he is elected from the majority party. When there is an impeachment of the President, political passions will be running so high that there is bound to be an imperceptible change in the Vice-President or the Speaker. There is no doubt that there are instances in India and in England when the Speaker and the Vice-President have maintained the noble traditions of the House, but it is necessary not only that there should be justice but it should appear that you are doing justice. At such a critical time when there is an impeachment of the highest man in the country, it is very necessary that the presiding officer must be the Chief Justice of the Supreme Court.

There is one more ground which is also very important and it is this that while impeaching the President, there would be several questions of law and fact and there will be also several questions about the admissibility of evidence. In a Parliamentary system of government, it is not very necessary that every one should be a lawyer or a judge, but surely when there will be so many mixed questions of law and facts and of the admissibility of evidence, it would be very difficult for a layman to decide such important questions. Impeachment can be based by a layman on wild rumours and hear say evidence. To decide whether a particular piece of evidence is admissible or not, it is very necessary that a man having legal acumen and having experience of law should be the presiding officer at such meetings or sittings. Therefore my submission is that the Chief Justice of the Supreme Court who is generally detached from public life should be requested to preside at such meetings. In the American Constitution there is such a provision. We take only those provisions from other constitutions which suit us and reject others which do not suit us although they are very salutary. I make an appeal to Dr. Ambedkar to embody this amendment, particularly in view of the fact that when political passions are so high, it is very difficult for the Speaker or the Vice-President to keep up their balance.

Mr. Vice-President : Amendments Nos. 1171, 1173 and 1176 all stand in the name of Prof. Shah. I suggest that he may move them one after the other.

Prof. K. T. Shah : Am I to move only one of them?

Mr. Vice-President : You can move all the three.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (3) of article 50, for the words 'either House' the words 'the People's House' be substituted and the words 'or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation' be deleted."

For clarification I will read the clause as amended by this amendment. The clause would be:

"When a charge has been so preferred by the House of the People, the other House shall investigate the charge."

Coming to the second amendment standing in my name, I move:

"That in clause (3) of article 50, after the word 'investigated' a full stop be inserted."

Then, I move :

"That after clause (3) of article 50, the following new clause be added :

'(3A) The President shall have the right to appear and to be represented at such investigation.' "

Sir, the first amendment is in consonance with an earlier amendment I moved, by which I sought to vest the power to investigate, the power to try, in the House of the People, and the Council of States, respectively; and not be left open to *either* House. The other House may investigate, and the President should have the right to be heard and be represented at such investigation. It is, of course, but the most rudimentary principle of jurisprudence that any man who is accused of any offence should have the right of being heard; and also of being defended by competent advisors or by competent counsel at such hearing or at such investigation. The right, therefore, of the President to be heard is given by this amendment specifically by an additional clause, and not made part of an earlier clause where other matters besides this are also included. The right of the sovereign people to charge the President, in my opinion, should be left untrammelled in this matter; and, similarly, the right of the President to be heard or to be represented by competent advisers should equally be explicitly stated, without linking up or coupling this one with the other, so that there may possibly be some doubt as regards procedure. My object, therefore, in putting forward this amendment is simply to bring in clarity of procedure and the removal of any possible doubt that hyper-ingenious lawyers might bring forward, or party passions might suggest. I therefore commend these amendments to the House, without taking any more time of the House.

Mr. Vice-President : The next three amendments which are grouped together are amendment Nos. 1172, 1174 and 1175.

(The Amendments were not moved.)

Amendment Nos. 1177, 1178 and 1179 are of similar import. Amendment No. 1177 may be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That in clause (4) of article 50, for the words 'passed, supported by' the words 'passed by a majority of' be substituted."

Mr. Vice-President : Amendment No. 1178 stands in the name of Mr. Mohd. Tahir and Saiyid Jafar Imam.

(Mr. Mohd. Tahir rose to speak.)

Do you want to put it to vote? You can say what you have to say in the general discussion. I shall give you an opportunity.

Mr. Mohd. Tahir : My amendment is of quite a different nature and it has to be discussed and moved.

Mr. Vice-President : You make a specific suggestion about 'two-thirds'. All right: you may come to the mike.

Mr. Mohd. Tahir : Mr. Vice-President, Sir, I beg to move:

"That in clause (4) of article 50, for the words 'not less than two-thirds of the total membership of the House', the words 'a majority of the members present and voting' be substituted."

Sir, I have moved this amendment because the provision, as it is, that is to say, requiring the votes as two-thirds, in my opinion seems to be against the spirit of democracy and it can bring in many difficulties and confusion.

[Mr. Mohd. Tahir]

I will submit before the House a very simple example. In case of the Chairman of a District Board, for instance, I think every Member of the House has got this experience. We have seen that a Chairman of a District Board for his misdeeds cannot be removed from the office unless two-thirds of the members vote against him with the result that, however dishonest he may be, it is impossible for the members to remove him from office, simply because a man in office however incompetent or dishonest he may be, at least he has got some power in his hand and by using that power, he manages that two-thirds of the members should not go against him and he keeps at least more than one-third of the members by his side, with the result that although the majority of the members are against his work in the District Board, we find that it is impossible for them to remove such a Chairman. It may be the same case with the President also, because the President will be in power and if there is solution to impeach him, then it would be very difficult for the members to remove such a President from the Office. I submit, Sir, that the most important thing that we are doing at present is the framing of this Constitution and we are deciding every article of our Constitution,—the most important thing—simply by majority of votes. Then, in the case of an officer against whom there is a resolution for impeachment—why should not such a resolution be decided by majority votes of the members present in the House? Therefore, Sir, in order to avoid all these difficulties, I have moved this amendment, and I hope this House will consider it deeply and decide that the amendment be accepted. With these words, I move.

(Amendment No. 1179 was not moved.)

Mr. Vice-President : The next three amendments standing in the name of Mr. Naziruddin Ahmad, Nos. 1180, 1181 and 1182 are disallowed.

Amendment No. 1183 may be moved. It stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (4) of article 50, after the words 'such resolution shall' the words 'be placed before the People's House, and if adopted by the latter, shall' be inserted."

The clause as altered would read:—

"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 charge preferred against the President has been sustained, such resolution shall be placed before the People's House, and if adopted by the latter, shall have the effect of removing the President from his office as from the date on which the resolution is so passed."

Sir, there is one safeguard added by my amendment, namely, that immediately the judgment is passed or the resolution is adopted by the other House, according to the scheme of this Constitution, the Resolution would automatically have the effect of removing the President. I do not think that that would be quite in consonance with our conception of fair justice being done to the accused and especially in the case of such highly exalted officers, or in the case of such offences as are likely to be the subject-matter of this investigation.

After all, the cases would be in all probability cases where politics would play a considerable part. They would not be pure questions of law or fact; but a good deal of opinion, a good deal of view-point, a good deal of the angle of approach would be involved. On that account, the judgment of one House by itself should not, I suggest, be made automatically effective, and the exalted officer be made to cease immediately thereafter to have any place in the scheme of things.

In the several amendments that I have the honour to place before this House, I have, of course, laid emphasis on the fact that the one House investigates and the other House tries; one House makes the accusation, and the other House determines the validity of that accusation. In that scheme of things, I think that it is important, it is but right and proper, that the President should be not only found guilty, and a resolution to that effect be passed by the House which tried him. But what is still more important is that the resolution should be further confirmed by the other House as well.

Mr. Tajamul Husain (Bihar : Muslim): Which has accused him?

Prof. K. T. Shah : Which has accused him. You would, therefore, have the same procedure in a slightly different form, of the two Houses agreeing in a measure, which is to be a measure of Parliament. Thus would this step become a measure of the whole legislature,—and, in the last analysis, a measure as desired by the sovereign people through their representatives.

I do not think that this safeguard will in any way offend against the requirements of fairness as well as the requirements of expediting such matters. It is not a dilatory procedure by any means. What is positive in its favour is that it will give, so to say, one more chance to political passions coming down, and the party concerned getting a fair verdict or at least a chance of vindication that may otherwise be denied.

I am particularly anxious that, since the trying procedure is vested, according at least to my scheme of things, in the Upper House, which is relatively a smaller body, and composed of the representatives of interests or the Units and which therefore is not directly representative of the people's will, a resolution of that House should not be taken to be operative immediately; and that there should be one more chance of the direct representatives of the People having their final say on the matter.

Whether you regard it in the shape of a kind of reprieve; whether you regard it as a kind of supreme pardon, or whatever way you like to look upon it,—I am afraid I cannot give a correct analogy or parallel—it is one more chance, in my opinion, for real justice being done, rather than suffer momentary exigency or political prejudices to prevail. Accordingly, I put it to the House that it would be erring,—if at all it is erring,—on the side of justice and fairplay, and as such it should be accepted.

(Amendment No. 1184 was not moved.)

Mr. Vice-President : Amendment No. 1185. Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That in clause (4) of article 50, for the words 'date on which', the words 'time when' be substituted."

Sir, I submit this is a very important amendment. Upon the acceptance of this amendment, a deadlock would be avoided and I hope honourable Members will kindly hear what I have to say. Dr. Ambedkar is not hearing.

Mr. Tajamul Husain : The whole House is hearing.

Mr. Naziruddin Ahmad : The whole House is useless unless Dr. Ambedkar agrees. (*Interruption.*)

Mr. Vice-President : That is a reflection, I think, (*Interruption.*)

Mr. Tajamul Husain : We want to hear you. (*Interruption.*)

Shri H. V. Kamath (C.P. & Berar : General): Is that statement in order Sir?

Mr. Naziruddin Ahmad : I withdraw it. Sir, I move amendment No. 1185. I consider this amendment to be very important and I desire the House should

[Mr. Naziruddin Ahmad]

listen. This has reference to the impeachment of the President. It is provided that as soon as the appropriate House passes a resolution declaring that the charge against the President has been substantiated—I refer to clause (4) of article 50—it will have the effect of removing the President "as from the *date* on which the resolution is passed". I submit, Sir, that this will lead to an impasse. By another article, article 54, clause (1), it is provided that as soon as the President is removed by a resolution, the Vice-President steps in from the '*date*' on which the President is removed and, under article 54, clause (1), the Vice-President shall act "until the date on which" the new President enters upon his office. There is an amendment to that article also which is connected with this: that is amendment No. 1207. I submit, Sir, that the President, if he is removed, is removed with effect from the *time* when the resolution is passed and *not* from the *date*. I will ask the House to consider a situation. Supposing the appropriate House under clause (4) of article 50 passes a resolution, say, at one o'clock, then according to clause (4) the President is removed as from the *date* on which the resolution is passed. I ask what will happen to acts done by the President on that date before one o'clock? The President may have declared an emergency under the Constitution in the morning; he may have, in the morning, assented to Bills. He may have appointed a Judge of the Federal Court; he may have dismissed or appointed a Ministry in the morning before his removal. If we allow clause (4) to remain as it is the President is removed with effect from the *date* on which the resolution is passed, that is, with effect from the period after the previous mid-night. The date begins after the mid-night. I ask what will happen to acts done by the President during the fateful day before his removal? I submit, Sir, his dismissal or removal must have reference to the particular *time* when he is removed. Otherwise, the Vice-President will step in as soon as there is a vacancy. This clause says the vacancy has effect from the date of his removal, that is before his removal. The Vice-President says, "I am the President with effect from the early morning of the 'date' of his removal". What will happen if the Vice-President acts retrospectively? He says, 'I am the President in the place of the President'. The President says, 'I was the President duly functioning before and up to the very moment of my removal'. I submit, Sir, that the words that he is removed with effect from the *date* on which the resolution is passed would be unhappy and would lead to absurd consequences. It will lead to a constitutional impasse and probably the Federal Court will have to decide it without any data. Commonsense says that the President should function till the *time*, that is the moment when he is dismissed, immediately after the resolution is carried. As soon as the resolution is carried, the President ceases to function. Up to that time his acts should be upheld and for that purpose the amendment is necessary. The text says that "He ceases to function with effect from the *date* on which he is removed" but the amendment says "that he would be removed with effect from the *point of time* the resolution is passed". There is a similar amendment to article 54 saying that the Vice-President shall act as President until the *date* on which the new President is appointed. In fact that must also be linked up with the *point of time* at which the new President is elected. If we provided for a whole day instead of a particular point of time, it will lead to absurdities. I submit this should be carefully considered by the House and accepted. The legality of the President's acts on the date of his removal but prior to the actual moment of his removal will be jeopardy.

Mr. Tajamul Husain : Sir, I rise on a point of order. While Mr. Naziruddin Ahmad was moving his amendment, he deliberately said that he was addressing Dr. Ambedkar who was busy otherwise and he was not addressing the House or you. Now the point is this that when a Member speaks he addresses the Chair or the House. He does not address a particular Member who is in charge

of the bill. Therefore, Sir, my point of order is this that you should hold that Mr. Naziruddin is guilty of contempt of the Chair and of the whole House and if that is your finding, a charge should be framed against him as under article 50 when the President is being impeached, he should be impeached by this House—as there is no other House which can try him and we are the supreme body and sovereign body—and we will make a charge against him and we will try him and you will preside over it. As the honourable Member said deliberately that he was not addressing the Chair or the House, he is guilty of contempt of the Chair and the whole House. I want a ruling, Sir.

Mr. Vice-President : The ruling will be given after proper consideration. I do not want to do anything in a passion.

Mr. Naziruddin Ahmad : I was not addressing any individual Member. I only insisted that the most important Member in the House should listen.

Mr. Vice-President : We shall pass on to the next amendment. No. 1186.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That at the end of clause (4) of article 50, the words 'by both Houses of Parliament' be added."

And the clause would then read—I am omitting the first four lines because I have already read that—

"which resolution shall have the effect of removing the President from his office as from the date on which there solution is passed by both Houses of Parliament."

and not only by one.

Sir, I regard *you* as the most important Member for the time being, and not the Chairman of the Drafting Committee; and I therefore address the House through you which I trust will listen sympathetically to the argument I am going to place before you, as I regard all other Members of this House to be equal *inter se*.

The point I have made is that the Resolution convicting the President on impeachment must be passed and adopted by not only one but by both Houses. It is in conformity with the general scheme of the amendments which I have suggested that one House should start the proceedings, the other should investigate and pronounce its judgment embodied in a Resolution; and that Resolution be finally confirmed by the other House.

Unless and until that is done, I have been maintaining that the cause of justice would suffer; and in the interest, therefore, of fairness and justice, this is a consequential amendment flowing from those which I have had the honour of placing before the House *viz.,* that the Resolution must be confirmed by both Houses, and that it should have effect only on the day that it is similarly confirmed by the other House which has not tried, the impeached President along with the House which tried and passed a Resolution of that kind.

Mr. Vice-President : Amendment No. 1187.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, I move the amendment standing in my name—

"That the following be added at the end of clause (4) of article 50 :—

'and it shall operate as a disqualification to hold and enjoy any office of honour trust or profit under the Indian Union.' "

Clause (4) in article 50 lays down that if investigation is successful and a resolution is passed the President shall be removed from his office, but this clause (4) does not lay down any disqualification. Therefore I have moved that after the impeachment is successful and after he is removed from his office, this should operate as a disqualification to hold and enjoy any office of

[Kazi Syed Karimuddin]

honour, trust or profit under the Indian Union. I hope the House will accept this amendment.

(Amendment Nos. 1188 and 1189 were not moved.)

Mr. Vice-President : The article is now open for general discussion.

Shri T. T. Krishnamachari (Madras: General): Sir, before throwing open this article for general discussion; there is one minor amendment necessary for the amendment moved by Shri Shankarrao Deo, *i.e.*, No. 1160, to make it read aright. As it is, the amendment speaks of substituting the words "one fourth of the total membership of the House." But the correct wording should be "one-fourth of the total number of members". In the event of the House accepting the amendment moved by Shri Shankarrao Deo, this minor amendment which I now suggest, is necessary, and if you think that amendment should be moved before throwing open the article for general discussion, it may be moved now.

Mr. Vice-President : Does the House allow this amendment to be moved in order to make the meaning clearer?

Honourable Members : Yes.

Mr. Vice-President : Then it may be formally moved by you, Mr. Krishnamachari.

Shri T. T. Krishnamachari : Sir, I move:

"That in the amendment No. 1160 moved by Shri Shankarro Deo, the words 'one-fourth of the total membership of the House' be replaced by the words 'one-fourth of the total number of members.' "

Mr. Vice-President : Now, Mr. Kamath can speak on the article in general.

Shri L. Krishnaswami Bharathi (Madras: General): In that case, Sir, sub-clause (b) of clause (2) of article 50 also requires a slight change. The sub-clause says—"unless such resolution has been supported by not less than two-thirds of the total membership of the House." Therefore, the same case arises there also, and that sub-clause also should be suitably amended.

Mr. Vice-President : Mr. Kamath.

Shri H. V. Kamath (C.P. and Berar : General): Mr. Vice-President, Sir, this is an important article of tremendous import in that it provides for the arrangement, the impeachment and the removal from office, of the President of the Indian Union. In any ordinary trial, in any criminal trial, the presiding officer of the tribunal is one who is expected to be impartial, and a man of the completest integrity. I hope that we in India shall not have any occasion to invoke the aid of this article, and that all our Presidents will be thoroughly constitutional and of impeachable integrity. But Sir, we have got to make provisions against human frailty and that is why we have got to incorporate an article of this nature in our Constitution. But it is very necessary, absolutely essential that when you proceed to impeach the President of the Indian Republic for violation of the Constitution, I say it is absolutely necessary that the officer presiding over such an investigation must be a man who is above party politics, and a man of the completest integrity and impartiality. In this context, Sir, the amendment moved by Mr. Karimuddin acquires some importance. The article as it stands says that when a change has been so preferred—I am referring to clause (3) of the article,—when a charge has been so preferred by either House of Parliament, the other House shall investigate the charge or cause the charge to be investigated. It is quite possible and probable that the other House may investigate the charge, or perhaps it may proceed to appoint another tribunal consisting of its own members and some others, to investigate the charge. But in either case, it is necessary that the Presiding officer of the House which is investigating the charge should not

preside over the impeachment proceedings. Suppose, for instance, the Upper House prefers the charge and the Lower House investigates it. Then, what is the position? The Lower House is presided over by the Speaker. Do we intend that the Speaker of the House of the People shall preside over the impeachment proceedings? The Speaker is almost always a party man, and the President is being impeached for some violation consequent upon a conflict that might have arisen between him and the party in power. Naturally, therefore, the Speaker who is a member of the party in power cannot be expected to be impartial and of the completest integrity in this particular affair. Suppose the charge is being investigated by the Upper House after it has been preferred by the Lower House. As the article stands, the Vice-President will preside over the proceedings. But, Sir, man is after all a frail creature. The Vice-President may have at the back of his mind the idea that if the President is impeached and removed from office, he will be able to step into his shoes. The Vice-President, therefore, will be, more or less, an interested man, because, if the impeachment succeeds and the President goes out of office, the Chairman of the Council of State will be able to step into his shoes and become the President. He may be interested in seeing that the impeachment succeeds. So in either case, whether the Lower House presides over the proceedings of impeachment or the Upper House, the presiding officer of that House cannot be expected to be impartial and absolutely above party politics, or above party passions, and of the completest rectitude, in those proceedings. Therefore, it is very necessary that the Chief Justice of India should preside over the investigation of the charge preferred against the President. He must have the last word not merely upon the conduct of the trial but also on all matters such as admissibility of evidence and cognate matters. Here, I will, with your permission, Sir, quote from "The Constitutional History of the United States" by A. C. Mac Laughlin.

> "When President Andrew Johnson was being tried before the Senate—the Chief Justice presiding—a similar question about the admissibility of evidence arose, and the Senate decided that the Presiding Officer might rule on the admissibility of evidence, and the ruling should stand, unless there was a division, in which case, the question should be passed on by the Senate itself."

Here the President was being tried and the Chief Justice was presiding, and in the course of the trial, a question arose and it was ruled that the Chief Justice must have the power to decide about the admissibility of evidence. Here also, I think, the same procedure should be adopted, for the impeachment of the President of the Indian Republic, and the Presiding Officer of the investigation should be the Chief Justice of India, who is neither the Speaker of the House of the People nor the Chairman of the Council of States. I therefore, lend my support to the amendment moved by Mr. Karimuddin, to the effect that the Chief Justice of India should preside over the investigation in connection with the impeachment of the President.

Sir, Mr. K. T. Shah moved an amendment, I refer to amendment No. 1183. Of course, his whole scheme is that the charges should be preferred by the Lower House, that it must originate, that it must be initiated by the Lower House, and that it should be investigated by the Upper House. I do not subscribe to this particular proposition, that it should be initiated only by the Lower House; it may arise either in the Lower House or in the Upper House. But if it arises in either of the two Houses, the other House investigates it. I however support him in so far as amendment No. 1183 says that the House which investigates the charge and finds it to be sustained should not have the last word as regards the removal of the President. The resolution, or the charge, if found sustained by the other House, the House other than the House that preferred the charge, that resolution must go back to the House that preferred the charge, because the

[Shri H. V. Kamath]

President should be impeached, and removed, not by the vote of one House only, but by the vote of both Houses. Therefore, it is important that in the constitution we should provide definitely, unambiguously and unequivocally that the President, if he is to be removed at all from his high office, must be removed by the vote of both Houses and not of one House only. The arguments advanced by Prof. K.T. Shah are sound. In the course of the trial, many months may elapse and it may be that certain prejudices and party passions which dictated the preferment of the charge might subside and perhaps when it goes back to the other House, it may be—I do not say it will always be so—it may be that the charge which was preferred by that House may be found, on further reflection that it could not be justly and fully sustained. So, both amendments No. 1183 and No. 1186 moved by Prof. K. T. Shah are important in this respect because they have the effect of removing the President of India by a vote of both the Houses and not by the vote of a single House, namely, the House which investigated the charge preferred by the other House and found it sustained on evidence advanced before it. Therefore, I think, Sir, that these amendments must be incorporated in some form or other in our Constitution. Just as in a criminal trial the Police hold a preliminary enquiry and then the case comes before a Court of law where the presiding officer is above the prosecution and above the defence, similarly when the charge preferred by the other House is investigated the presiding officer must be the Chief Justice of India because he is neither the Speaker of the House of People nor the Chairman of the Council of States. That is as regards the first amendment moved by my Friend Mr. Karimuddin.

Secondly, as regards the two amendments moved by Prof. K. T. Shah to the effect that the President must be removed by the final vote of both the Houses and not by the vote of a single House only. This is also a very sound principle and must be embodied in the Constitution.

Then there is amendment No. 1187 of my Friend Mr. Karimuddin again, that the President, after he has been impeached and removed from office, must not be eligible for any office of profit or honour or trust in the Indian Union. It follows—I think it is a matter of integrity in public life, of the standards of public conduct which we proclaimed at Jaipur the other day—it follows that the President.....

My Friend Mr. Husain is smiling chuckling to himself. I do not know what his smile means, whether the Jaipur.....

Mr. Tajamul Husain : It does not follow.

Shri H. V. Kamath : I leave it to Mr. Husain to explain why it does not follow. I will say only this much, that the President has been removed for a gross violation of the Constitution by an impeachment and an adverse vote of both the Houses; do we contemplate, do we visualise that such a man, such a high dignitary, when he has been removed by Parliament from office should be eligible for an office of trust or honour in the Indian Union? No, a thousand times no. We shall keep such a man away from all office and all honour or trust so far as our country is concerned. I therefore lend my support to amendment No. 1187 as well.

Pandit Thakur Dass Bhargava (East Punjab: General): *[Mr. Vice-President, I do not agree with the wording of this article 50. In the first instance there is this defect in article 50 that only the President has been mentioned therein, though there would be many occasions when the Vice-President would act as President. For that there is no provision. In such cases, if there is any violation of the Constitution, the responsibility would clearly be that of the Vice-President, who would be held responsible for his actions. For this reason, the Vice-President should also have been in this article.

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* [ ] Translation of Hindustani speech.

Another short-coming which I find in this article is that the words "Violation of the Constitution" have nowhere been defined. There can be "Violation of the Constitution" in various ways, *e.g.,* by not conforming to the instructions contained in Schedule Four; by not fulfilling the undertaking imposed by the Oath under Article 49, and in failing to carry out his other functions. Hence, these words "Violation of the Constitution" are vague and require clarification. The President will be the highest official of the Indian Union, and there is a possibility of his being unnecessarily harassed for his act on account of the presence of those vague words. This is a very undesirable position.

The third short-coming, which I find, is that in the fact of the vague wording, the condition of thirty members giving notice of such resolution is not a sufficient safeguard. I think a notice by one-fourth of the total membership should be necessary. This amendment is very necessary, and I support it. The additional safeguard that the Resolution should be passed by two-thirds of the total membership is also necessary.

The stage for investigation could be reached after these conditions have been satisfied, and the enquiry will then be conducted by the other House. Under article 50 (3), either the House would investigate the charge itself or appoint somebody else for the work. If the House undertakes the investigation itself, then there is no reason why the President of the House should not continue to act as President. The Speaker of the House of People—is most trustworthy person and he is above all party-politics. He can be fully trusted to act justify without fear or favour. The argument of Mr. Kamath that since the Chairman of the Council of States would also be the Vice-President and so he is not likely to act justly because by the removal of the President he gets a chance to act otherwise, is untenable. Firstly, he would not be the only judge and secondly he would not be so characterless as to cast away all fairness. In this connection, an important question that arises is that if after investigation the charge is substantiated, then the condition of fixing the two-third majority of members would make the right of impeachment quite illusory. To fetter justice by so many restrictions is not proper. There are sufficient and proper safeguards against frivolous accusations in sub-clauses (a) and (b). The result of the enquiry of the House being in support of the charge or the judgment of the Supreme Court or any higher court to that effect, will change the whole position. Under these circumstances there is no necessity of the condition that the Resolution should be confirmed by a two-thirds majority; rather, a bare majority should be enough. If as a result of investigation the charge is not proved, then the question of passing the resolution does not arise. If a two-thirds majority has the right to pass a resolution only in the event when it supports the charge, then it would be an insult to the House, which has investigated the charge, or to the Court appointed for the purpose. In the other case, there is no occasion or justification for passing a resolution. Of course, if the charge is proved the House should have the right to confirm the resolution by bare majority. The entire article 50 remains quite vague and unsatisfactory by not providing any definite machinery and method of investigation in 50 (3) and by not indicating the result as a definite outcome of the investigation in 50 (4). No doubt, this article would be rarely put to use, but, even then, whenever it would be used difficulties in its proper application will have to be faced. In it present form its correct interpretation would become impossible.

My submission is that if the amendments, to which I have alluded, are not incorporated, then many difficulties would crop up. Another minor point which I want to make is that in cases where the violation of the Constitution by the President is so expressly pronounced that both the Houses want to play the accusers, then the question will arise which House would be the accuser

[Pandit Thakur Dass Bhargava]

and which the investigating authority. Though it is not probable, there is no provision here for such a contingency. There should be some provision that in such and such cases the House of the People should be the accuser and the Council of States should be the investigating authority. With these words I support the article.

Shri Kuladhar Chaliha (Assam: General): Mr. Vice-President, Sir, while you have given a chance to the important, more important and the most important people, I am glad that you have now given a chance to the most unimportant side of the House.

The trial of the President is a very important matter and requires careful consideration from the Members of this House. Mr. Karimuddin's amendment seems to be very sensible, very fair and impartial. When we try a man of distinguished position and dignity the trial should be presided over by such a person who would be detached from party passions and prejudices. And who could that person possibly be? The Chief Justice of the Federal Court can be the only person who will be the fit person. He will bring into the trial such impartial views as the Speaker will be unable to do. In trying our highest personage it is necessary that we should have a man presiding who will be absolutely free from any bias and who will be free from party prejudices. The Speaker, however high a person he might possibly be, will yet not be away from party leanings and party prejudices, as we find everywhere.

This is a very small amendment and it requires consideration not because it has come from a party, or from a person who does not belong to our party—if that is the consideration I think we will be doing an injustice to ourselves—but we should be fair to all who bring sensible amendments. I wish I could have followed Pandit Bhargava who spoke in high-flown Hindustani which is not understandable by us, but from what I partially followed it was hardly convincing. The Speaker will not be able to bring in proper discussion on the subject. Apart from that he may not be a great lawyer. He may be a very popular person, but he may not be the best person, and may be one backed by the majority. As such his ideas about the admissibility or inadmissibility of evidence will be a matter of great conjecture, and they may possibly be swayed by rumours and other things. And evidence may be let in which may cause prejudice to the great personage. I suggest that we should view this amendment dispassionately and allow the Chief Justice to preside over the trial of the President who will be the most distinguished man we will have in our country. As such I humbly suggest that you may consider the matter and think over the amendment of Mr. Karimuddin.

In the American constitution they have made provision for the Chief Justice to preside over such trial. In fact, in the trial of President Johnson, it was found that unless he had been there the President would have been dismissed. But he allowed such evidence that was proper and therefore the President just escaped from being chucked out and dismissed from office. Similarly in our country also we should try to be fair and just.

I think our party will consider this very wholesome and sensible amendment which has been so ably supported by Mr. Kamath.

Shri B. Das (Orissa : General) : Sir, I speak with much diffidence. We are trying to create a democratic President, but we are suspicious and the House is suspicious. The Members, after the recess, after returning from Jaipur, are very much subdued. They do not frankly and openly say what is in their mind. Yet, the few amendments that have been moved by those with whom I do not see eye to eye, and others stabled and not moved show that there is suspicion in the minds of Members.

Mr. Vice-President : Is it necessary for Mr. Das to refer to Jaipur? Members have again and again referred to it. I do not know what Jaipur has to do with the proceedings of this House.

Shri B. Das : I do not know why Members are subdued ! Article 47 to 50 are the most important articles regarding the President. Are we creating a democratic President or are we creating a Frankenstein? Under article 50, we are discussing at present about our suspiciousness of the President and are considering in what way he can be prosecuted for misdemeanours to the Constitution. That shows that we are not creating a democratic President. By means of the various amendments moved and not moved, many Members want to further restrict the hands of the President. Human minds have travelled far backwards and to the memory of Napoleon, a common man who was elected as President and became an autocratic Emperor. We have the recent memories of South American Presidents who suddenly became great autocrats and dictators in those so-called republics which abound in South America. Unfortunately, we have to see whether we are giving any dictatorial powers to our President. Though he may be guided by a democratic Cabinet, is it safe to entrust him with dictatorial powers? With all human weaknesses, will a democratic President remain democratic and not turn autocratic? Sir, the amendments that have not been moved indicate that we are human beings and have our suspicions about the democratic President turning autocratic. Many want that he should not be a baby of 35 years, but should be an elderly statesman. My own amendment No. 1185 I did not move, hoping that the President will prove to be a gentleman always. It is to this effect: No President should seek service under the Union Government or as the Governor of a State after he retires from the Presidentship of the Republic of India. Why should that human weakness manifest in our elderly statesmen? Why should he seek to become an Ambassador or a Governor? Sir, these things are agitating our minds. It is for the democratic President to prove that he is above all these allurements.

Sir, I have had experience of these suspicious conducts in the recent past, in the days of British Government; a Governor of Madras, after retirement, came here as the Governor-General of India and his wife looked at it as a means of getting fabulous presents and other gains. We have to consider whether the democratic President we are going to have under articles 41 to 51 will not later on turn out to be autocratic President and accept presents and other perquisites. Such presents are not small sums. The jewellery and other presents go up to lakhs and crores. We have to see that our future President, his wife, his daughters or his daughter-in-laws are not allowed to accept such presents. I wish that my esteemed Friend Dr. Ambedkar devises a provision which will make all presents received by a President or his family during the time he occupies the Gadi at Delhi accrue to the Nation and become State property. The benefit of such presents should not go to the President on his dependants.

Sir, if I sought permission to speak, I did so only to voice the feelings of many Members. We are all human beings. We are not Thakkar Bapa or Mahatma Gandhi or even you, Mr. Vice-President. My mind is suspicious. All my political career I have been suspicions of every Englishman and I have been suspicious of those who have been trained in the British traditions. Therefore I want to know what we are going to do to allay these suspicious. The speeches made on the floor of the House show that we are suspicious of our President. That being the case, why not we make matters clear? We cannot expect that because we may have a President well trained in the school of Mahatma Gandhi, others may not seek Governorships and the like. While considering the article under reference we have to bear in mind that we are giving autocratic powers to pass Ordinances and other dictatorial controls to the President and the Cabinet. Sir, these are my observations.

Mr. Tajamul Husain : *[Mr. Vice-President, my learned Friend Mr. Tahir has moved amendment No. 1178.....]

Mr. Vice-President : Our South Indian friends have repeatedly told me that they cannot follow highflown language. You are at liberty to speak in any language you like; but if you want to influence their votes you must speak in English. It is for you to decide.

Mr. Tajamul Husain : Because a friend of mine Pandit Bhargava spoke in beautiful Hindustani, I wanted to show to the House that I was also capable of speaking in my mother tongue as well as a person from Delhi, although I come from a long way off, Bihar.

Mr. Vice-President : He comes from East Punjab.

Mr. Tajamul Husain : Punjabi is not Hindustani. However, I shall speak in English, Sir.

Mr. Tahir has moved his amendment to this article. The article says that when the Parliament wants to censure the President of the Indian Republic it should at least pass a resolution to that effect by a majority of not less than two-thirds of the members present and voting. Mr. Tahir says: 'No, that is wrong. In a democracy it should not be done like that. It should be done by a simple majority of votes.' I have come here to oppose his amendment.

Now, if the President of the Indian Republic is to be turned out of office by a simple majority of one or by the casting vote of the person presiding at that time, then what would happen?

The President will be a mere tool in the hands of the majority party of the House. We do not want a President like that. We do not want a President who should flatter the majority party, no matter what party is in power, Congress, Socialist or Communist. We do not want the President to look to the majority party in the House. Once elected, let him become impartial absolutely and not look for favours at the hands of any party. Therefore, I support the draft article as it is. If the President is to be impeached, let him be impeached by a majority of two-thirds of the members present.

Now, Sir, I come to amendment No. 1183 moved by my Friend Prof. K. T. Shah. He wants that in clause (4) of article 50, after the words "such resolution shall" the words "be placed before the People's House and if adopted by the latter, shall" be inserted. Article 50 lays down the procedure for the impeachment of the President. There are two Houses, the Upper House and the Lower House, the Council of States and the House of the People. Now, Article 50 says that either of the two Houses may frame a charge against the President and when one House—suppose the Lower House—frames the charge, accuses or makes certain allegations against the President of the Republic, the other House, the Council of States shall enquire into it, which means that the other House will act as judges and the House which is accusing will be only the complainant or the prosecutor. In legal jurisprudence you will find that the person who accuses should not be the judge. That is why we have been fighting that the judiciary should be separated from the executive. As soon as time permits, that is going to be done. It suited the British Government to be the accuser as well as the judge, but now that we are having democracy, now that India has become independent, the accuser should not be the judge. Therefore I have come here to oppose the amendment moved by my Friend Prof. K. T. Shah.

The next amendment is 1185 moved by Mr. Naziruddin Ahmad. His is a simple amendment. He wants that the President shall cease to be President from the time when such a resolution has been passed, instead of the date on which the resolution is passed. This appears to be reasonable and simple. Suppose the meeting is held at 10'O clock in the morning and the motion of

* [ ] Translation of Hindustani speech.

censure is passed, the President according to the existing clause (4) will remain President till twelve in the night on that date. According to the amendment of Mr. Naziruddin Ahmad, the moment the Resolution is passed, the President automatically ceases to be President. I think this is reasonable and should be accepted.

Then I come to amendment No. 1186 moved by Prof. K. T. Shah that at the end of clause (4) the words "by both Houses of Parliament" be added. He wants that both the Houses of Parliament should try the President of the Republic when one of the Houses has accused him. I do not want to repeat my argument but what he wants is that both the accusers and the judges should sit together and deliver judgment on the case. As the accuser should not be the judge also, I oppose this amendment also.

Next comes amendment No. 1187 moved by my honourable Friend Kazi Syed Karimuddin. In this article, it is nowhere mentioned as to what is going to happen to the President of the Republic after he ceases to be the President on account of the censure motion passed against him. When the President is removed, he will be unfit to hold any office, but it must be mentioned in this Constitution also. I think the amendment of Mr. Karimuddin is very reasonable and I therefore support it. When a President is removed, it shall operate as a disqualification to hold and enjoy any office of honour, trust or profit under the Indian Union. Of course, that will be done but I want it to be in black and white.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, of the many amendments which have been moved to this article, I can accept only two. One is No. 1158 moved by my Friend, Mr. Gupte providing of fourteen day's notice for the discussion of a motion to impeach the President. The second amendment which I am prepared to accept is amendment No. 1160 moved by my Friend Mr. Deo, as amended by Mr. T. T. Krishnamachari. I think the original provision in the Draft Constitution did not lay down sufficient number of members as a condition precedent for the initiation of the motion. I think the change provided by the amendment is for the better and I am therefore prepared to accept it.

Now, Sir, I come to the other amendments which I am sorry to say I have not been able to accept but which I think call for a reply. The amendments which call for a reply are the amendments moved by Prof. K. T. Shah, Nos. 1151, 1171, 1173, 1176 and 1186. Sir, the amendments which have been moved by Prof. K. T. Shah refer to two questions. The first is the scheme of impeachment which has been laid down in the Draft Constitution and the second relates to the right of the President to appear and defend through a lawyer before the House which is investigating the charge against the President. So far as the second amendment of Prof. K. T. Shah is concerned. I do not see that there is any necessity for any such amendment at all; because Prof. Shah referred to the article—I think it is sub-clause (4) or (3),—it makes ample provision for permitting the President not only to appear before the investigating House, but also to be represented by any other person, namely, a lawyer. All that Prof. K. T. Shah has done is to separate this particular part of that clause and to put it as sub-clause (3) (a) in order to make it an independent proposition by itself. I do not think that here is any such necessity for the device that he has adopted.

Now, I come to the first part, namely, the drawbacks which he has shown in the scheme of impeachment provided in the Draft Constitution. Before I proceed to reply to his points, I think it is desirable that the House should have before it a clear picture of the provisions of the scheme embodied in the Draft Constitution. Any one who analyses this article will find that it embodies four different propositions. Firstly, the motion for impeachment

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may be initiated in either House, either in the Council of States or in the House of the People. Secondly, such motion must have the support of a required number of members. Thirdly, the House which has passed the motion for investigation shall not be entitled to investigate the charge. And fourthly, that the House which has investigated the charge, if it finds the President guilty must do so by a majority of two-thirds.

These are the four propositions which have been embodied in this particular article. Now Prof. Shah's proposition is that the Upper House should have nothing to do with the impeachment of the President and that the jurisdiction to impeach the President, to investigate and to come to its own conclusions must be solely vested in the House of the People. I have not been able to understand the reasons why Prof. K. T. Shah thinks that the Lower House is in a special way entitled to have this jurisdiction vested in it. After all the trial of the President or his impeachment is intended to see that the dignity, honour and the rectitude of the office is maintained by the person who is holding that particular office. Obviously, the honour, the dignity and the rectitude of that office is not merely a matter of concern to the Lower House, it is equally a matter of concern for the Upper House as well. I do not, therefore, understand why the Upper chamber which, as I said, is equally interested in seeing that the President conducts himself in conformity with the provisions of the Constitution should be ousted from investigating or entertaining a charge of any breach of conduct on the part of the President in his integrity and it is equally concerned as the House of the People. Prof. K. T. Shah felt so sure about the correctness of his proposition that he said in the course of his argument that only those who have been slavishly copying the other constitutions would have the courage to oppose his amendments. I do not mind the dig which he has had at the Drafting Committee. As I said in my opening address, the Drafting Committee in the interests of this country has not been afraid of borrowing from other constitutions wherever they have felt that the other constitutions have contained some better provisions than we could ourselves devise. But I thought Prof. K. T. Shah forgot that if there was any person so far as I am able to see, who has practised slavish imitation of the Constitution of the United States, I cannot point to any other individual except Prof. Shah. (*Laughter*). I thought his whole scheme which was just a substitute for the scheme of Government embodied in the Draft Constitution was bodily borrowed with commas and semi-colons from the United States Constitution, and when he was defeated on his main proposition, his worship of the United States Constitution has been so profound, so deep, that he has been persisting in moving the other amendments which, as he himself knows, are only consequential and have no substance in themselves. I therefore do not mind the dig that he has had at the Drafting Committee.

The other proposition which Prof. K. T. Shah has sought to introduce in the Constitution is that there should be a concurrence of the other House. He has evidently decided to accept the main scheme embodied in the Draft Constitution. What he wants is that even if the one House which has investigated the offence has come to a conclusion, that conclusion ought not to have effect unless it has been adopted by the other House. I cannot understand why, for instance, the verdict of a jury—and this is no doubt a sort of jury, which will investigate and come to a conclusion—I do not understand why the verdict of one House, which it would have come to after investigation should be submitted to another jury. I have never known of any such principle or precedent at all. Secondly, I do not understand what is to be the effect if the other House does not adopt. Is the other House required to adopt only by bare majority or two-thirds majority? Supposing the other House does not adopt the conclusion which has been arrived at by one House, what is to be done? Obviously there will be

a tie. Prof. K. T. Shah provided, in my judgment, no remedy for the dissolution of that tie. For these reasons, I am unable to accept any of the amendments moved by Prof. K. T. Shah.

There is another amendment which I might deal with because it is analogous to the amendments moved by Prof. K.T. Shah, and that is amendment No. 1178 moved by my Friend, Mr. Mohd. Tahir. He says that it is unnecessary to provide for a two-thirds majority for a charge of being guilty of violation of the Constitution. He thinks that a bare majority is enough. Now, Sir, I think my Friend, Mr. Mohd.Tahir has not taken sufficient notice of the fact that a motion for impeachment is very different from a motion of no confidence. A motion of no confidence does not involve any shame or moral turpitude. A motion of no confidence merely means that the party does not accept or the House does not accept the policy of the Government. Beyond that no others censure is involved in a no confidence motion. But, an impeachment motion stands on a totally different footing. If a man is convicted on a motion for impeachment, it practically amounts to the ruination of his public career. That being the difference, I think it is desirable that such an important consequence should not be permitted to follow from the decision of a bare majority. It is because of this difference that the Drafting Committee provided that the verdict of guilty should be supported by a two-thirds majority.

Now, Sir, I come to the amendments of my honourable Friend, Kazi Syed Karimuddin. His first amendment which I propose to take for consideration is amendment No. 1152. By this amendment he wants to add treason, bribery and other high crimes and misdemeanours after the words, 'violation of the Constitution'. My own view is this. The phrase 'violation of the Constitution' is quite a large one and may well include treason, bribery and other high crimes or misdemeanours. Because treason, certainly, would be a violation of the Constitution. Bribery also will be a violation of the Constitution because it will be a violation of the oath by the President. With regard to crimes, the Members will see that we have made a different provision with regard to the trial of the President for any crimes or misdemeanours that he may have made. Therefore, in my view, the addition of these words, treason and bribery, are unnecessary. They are covered by the phrase "violation of the Constitution".

His other amendment is amendment No. 1170, whereby Mr. Karimuddin seeks to provide that when an investigation is being made into the charge of impeachment, the Chief Justice of India shall preside. I have no quarrel with his proposition that any investigation that may be undertaken by any House which happens to be in charge of the impeachment matter should have the investigation conducted in a judicial manner, having regard to all the provisions which are embodied in the Criminal Procedure Code and the Evidence Act. As I said, I have no quarrel with his objective; in fact, I share it. The only point is this: whether this is a matter which should be left for the two Houses to provide in the Rules of Procedure or whether it is desirable to place this matter right in the Constitution in a definite and express manner. My Friend Mr. Karimuddin will see that in sub-clause (3) it is provided that the House shall investigate, and therefore it is quite clear that both the Houses of Parliament in making the rules of procedure will have to embody in it a section dealing with the procedure relating to impeachment. Because, it may be, at one time the initiation may take place in the Upper Chamber and trial may take place in the Lower Chamber, and *vice versa*. So both the Houses will have to have a section dealing with this matter in the procedure of each House. That being so, there is nothing to prevent the legislature from setting out in that part of the procedure of the two Houses that wherever that investigation is made either the Chief Justice shall preside or some other judicial officer may preside, and therefore it seems to me that his object will be achieved if what I submit is carried out by the procedural part of the Rules of the two Houses. This provision is therefore quite unnecessary.

[The Honourable Dr. B. R. Ambedkar]

I come to his third amendment, No. 1187. He wants that the Constitution should lay down the disqualifications which must necessarily arise out of a charge of guilt on impeachment. The language that he has borrowed I see is from the United States Constitution. My view with regard to this matter is this. So far as membership of the legislature is concerned, as I pointed out on an earlier occasion, the matter is covered by the provision contained in article 83 which lays down the disqualifications for membership of the legislature. As I then stated, it would be perfectly possible for Parliament in laying down additional disqualifications to introduce a clause saying that a person who has been impeached under the Constitution shall not be qualified to be a member of the legislature. Therefore, by virtue of article 83, it would be perfectly possible to exclude a President who has been impeached from membership of the legislature.

The only other matter that remains is the question of appointment to office. It seems to me that there are several considerations to be borne in mind. It is quite true that the provisions of the Draft Constitution leave this matter open. But, I think it would be perfectly possible for Parliament, when enacting a Civil Servants Act, as I have no doubt the future Parliament will be required to do, to lay down the qualifications for public service, their emoluments and all other provisions with regard to public service. Obviously, it would be open to Parliament to say that any person who has been impeached under the law of the Constitution shall not be a fit person to be appointed to any particular post, either an ambassadorial post, outside the Government, or inside the Government in any particular department. Therefore, that matter, I see, can also be covered by Parliamentary legislation.

Shri H. V. Kamath : Am I to understand that Dr. Ambedkar is personally in favour of this amendment?

The Honourable Dr. B. R. Ambedkar : Yes; I think there is nothing in this amendment except the fact that this was met by other ways.

Now, Sir, the other question is this: is it necessary to have these disqualifications laid down specifically and expressly in the Constitution? It seems to me that there is no necessity, for two reasons. One is that no person who has been shamed in this manner by a public trial and declared to be a public enemy would ever have the courage to offer himself as a candidate for any particular post. Therefore, that possibility, I think, is excluded by this consideration. The second is this: whether the people of this country would be so wanting in sense of public duty and public service to elect any such person, if he, as a matter of fact, stood. I think it would be too shameful an imputation to the people of this country to say that it is necessary to make an express provision of this sort in the Constitution because the people of this country are likely to elect persons who are criminals, who have committed breach of trust and who have failed the public in the performance of their public duties. I think these weaknesses are inherent in all societies and no good purpose will be served by advertising them by putting them in the Constitution. I therefore think that the amendments, however laudable they are, are not necessary to be embodied in the Constitution.

Mr. Vice-President : The amendments which have been moved will now be put to vote.

Amendment No. 1152 standing in the name of Kazi Syed Karimuddin. The question is :

"That in clause (1) of article 50, after the words 'for violation of the Constitution', the words 'treason, bribery or other high crimes and misdemeanours', be inserted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1151 standing in the name of Prof. K. T. Shah: First part.

The question is:

"That in clause (1) of article 50, after the words 'is to be impeached for' the words 'treason or' be added."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1151 standing in the name of Prof. K. T. Shah: Second Part.

The question is:

"That in clause (1) of article 50, for the words 'either House' the words 'the People's House' be substituted."

The amendment was negatived.

Mr. Vice-President : I now put to vote amendment No. 1160 as modified by the amendment of Mr. T. T. Krishnamachari.

The question is:

"That in sub-clause (a) of clause (2) of article 50, for the words 'thirty members', the words 'one-fourth of the total number of members' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (2) of article 50, for the words 'thirty members' the words 'hundred members' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (a) of clause (2) of article 50, for the words 'after a notice' the words 'after at least 14 days notice' be substituted."

The amendment was adopted.

Mr. Vice President : The question is :

"That in sub-clause (a) of clause (2) of article 50, for the words 'moved after a' the words, 'moved after fourteen days' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (b) of clause (2) of article 50, for the words 'supported by' the words 'passed by a majority of' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is :

"That for sub-clause (b) of clause (2) of article 50, the following be substituted:—

'(b) such resolution has been supported by a majority of the members present and voting'."

The amendment was negatived.

Mr. Vice-President : I am not putting No. 1168 to vote because it is the same as 1167. It is already covered.

The question is:

"That the following new sub-clause be inserted after sub-clause (b) of clause (2) of article 50:

'(c) the meeting shall be presided by the Chief Justice of the Supreme Court whose decision on the admissibility of evidence shall be final'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (3) of article 50, for the words 'either House' the words 'the People's House' be substituted and the words 'or cause the charge to be investigated and the President shall have the right to appear and to be represented at such investigation', be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (3) of article 50, after the word 'investigated' a full stop be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That after clause (3) of Article 50, the following new clause be added:—

'(3A) The President shall have the right to appear and to be represented at such investigation.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (4) of article 50, for the words 'passed supported by' the words 'passed by a majority of' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in clause (4) of article 50, for the words 'not less than two-thirds of the total membership of the House', the words 'a majority of the members present and voting' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (4) of article 50, after the words 'such resolution shall' the words 'be placed before the People's House, and if adopted by the latter, shall' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is: Amendment No. 1185.

Mr. Naziruddin Ahmad : Sir, no reply has been given to my amendment by Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I said I oppose it.

Mr. Vice-President : The question is:

"That in clause (4) of article 50, for the words 'date on which', the words 'time when' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That at the end of clause (4) of article 50, the words 'by both Houses of Parliament' be added."

The amendment was negatived.

Mr. Vice-President : The question is:

"That the following be added at the end of clause (4) of article 50:—

'and it shall operate as a disqualification to hold and enjoy any office of honour, trust or profit under the Indian Union.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 50, as amended, stand part of the Constitution."

The motion was adopted.

Article 50, as amended, was added to the Constitution.

Article 51

Mr. Vice-President : We come to article No. 51.

The motion is:

"That article 51 form part of the Constitution."

We shall take the amendments one after another. Amendment Nos. 1190 and 1191 are of similar import and are to be considered together. No. 1190 may be moved.

(Amendment Nos. 1190 and 1191 were not moved.)

No. 1192 is disallowed.

No. 1193, first alternative, and Amendment No. 1194 are similar and are to be considered together and I can allow 1193 to be moved—first alternative. Mr. Tahir.

Mr. Mohd. Tahir : Sir, I beg to move:

"That in clause (2) of article 51, for the words 'six months' and the words 'full term of five years as provided in article 45 of this Constitution' the words 'three months' and the words 'remaining term of five years in which the vacancy so occurs' be substituted respectively."

Sir, regarding the period of six months and three months I would only submit that it is a matter of importance and it is better that the sooner it is decided the better it is and the period of six months is too long and therefore I have suggested that it should be decided in three months only.

Now I come to the second point. In such cases the office will remain only for the remaining term of five years in which the vacancy so occurs. Supposing the President is elected and after one year of his term the vacancy has occurred by his removal or resignation or anything otherwise, then in that case the new President who will be elected will hold the office for the remaining term of 5 years. In doing so, Sir, I want that the term of the Parliament and also the term of the office of the President should run parallel side by side so that after every five years when there is a new Parliament, there must also be a new President—a new air and new breath. If it be not so, then to my mind it appears that there would be some difficulties. Supposing the President is elected after two years when the vacancy occurs, then he will continue in office for another two years after the new Parliament is elected. Then there may occur two difficulties. Suppose the President belongs to a certain party and unfortunately in the next election that party does not come in with a majority. Then what will be the position of the President who is still continuing in office? Certainly, he will have to vacate the office on many grounds. Either he will resign from his office or the party which comes in with a majority will not consider him suitable to their own views, aims and objects.

Secondly, I would submit that if a President who is in office at the time of the elections continues in his office for some more years after the election, then it is but natural that the President, being in power, certainly will influence the elections for the new Parliament, and in my opinion, any influence exercised on the elections is against—it is hopelessly against—the spirit of democracy. Moreover, nobody can check it, because the President in power will naturally want to continue in power, and therefore, the party to which he

[Mr. Mohd. Tahir]

himself belongs, must come into power. Therefore he will exercise all his influence to see that such a party comes into power. Therefore, it is quite undesirable that the President should continue in office beyond a period, when Parliament comes to an end. Therefore, I submit that in all fairness, it would be desirable that the office, of the President and the term of life of the Parliament should run side by side, for equal periods of time. With these few words I submit my amendment to the House for its acceptance.

Mr. Vice-President : You can move the alternative amendment also.

Mr. Mohd. Tahir : Sir, the second alternative amendment runs as follows :

"That for article 51 the following be substituted :—

'51. If the office of the President becomes vacant by reason of his death, resignation, removal or otherwise, the Vice-President shall act as President for the remaining term of office in which the vacancy so occurs.' "

In moving this amendment, Sir, I submit that when the question of election of President or the Vice-President comes before Parliament or before the country, it is but natural that the Parliament and the country as a whole, will think of selecting the best two men of the country to be the President and the Vice-President. The best two men are elected as President and Vice-President, and after that, if the vacancy arises in the office of the President, there is no reason why the third person should be elected for that office, and not the next best man who has already been elected as Vice-President and who has been in office, and who has had experience of the office in which he has been working for a certain period. Therefore, in all fairness, I am of the opinion that in case of vacancy of office of President, the Vice-President in office should automatically be in the President for the time that remains unexpired, and for which that office has fallen vacant.

With these few words, Sir, I submit my amendment to the House for its acceptance. I hope the House will consider these amendments seriously and accept them.

Mr. Vice-President : Amendment No. 1198, standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That the following new clause be added after clause (2) of article 51:—

'(3) During the interval between the date when a vacancy in the office of the President occurs, and the date when new election to that office is completed, and the name of the new President announced, the Vice-President, provided for in the next following article, shall hold the office of and act as President of the Union.' "

Sir, this is only a consequential amendment, trying to fill in the gap between the removal, resignation or death of one President and the election of his successor. Some arrangement must be made for the interim period, whether it is three months or six months or whatever period it may be, between the election of the new President and the demise or removal of his predecessor. This is at least one example in which, may I make a present of my non-imitation of the American Constitution. There, after all, the Vice-President automatically takes charge in such emergency and election is avoided. Here we have insisted upon not only election, but election not for the balance of the period remaining. but for the full term of the office. If the Honourable Chairman of the Drafting Committee will consider the spirit as well as the wording of my amendment, he will find that there are much fewer imitations in mine than in his,—the only difference being that he has imitated several more constitutions, while I have reserved my "worship"—as he called it—for only one.

This, however, does not affect the simple provision that some interim provision must be made, and so far as I can see, the Draft does not make any satisfactory arrangement for the interim period during which the office may remain vacant. My amendment only seeks to provide for a consequence and hence, I hope the House will accept it.

Mr. Vice-President : Amendment Nos. 1195, 1196 and 1197 are disallowed, being verbal ones. Dr. Ambedkar.

The Honourable Dr. B.R. Ambedkar : Sir, I am sorry I cannot accept the amendment moved by Prof. K. T. Shah. His amendment seems to be covered altogether by article 54 (1). I fail to find any difference between the amendment that he has moved and the provision contained in sub-clause (1) of article 54. I think if he considers this article, he will find that his amendment is unnecessary and superfluous.

With regard to the other amendment, the point of difference is that any one who is elected as a result of the resignation and so on, should only occupy the Chair of the Presidentship during the balance of the term, while the provision contained in the Constitution is to the effect that if a person is elected as a result of resignation, death and so on he should continue to be the President for the full term perscribed by the Constitution. I see no reason why the term of office of a person who has been elected to the office should not be the full term prescribed by the Constitution and why he should be limited only to the balance of the term. I therefore, see no justification for the amendment at all.

Mr. Vice-President : I shall put amendment No. 1193—first alternative—standing in the name of Mr. Mohd. Tahir to vote.

The question is:

"That in clause (2) of article 51, for the words 'six months' and the words 'full term of five years as provided in article 45 of this Constitution' the words 'three months' and the words 'remaining term of five years in which the vacancy so occurs' be substituted respectively."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1194 standing in the name of Prof. K. T. Shah.

The question is:

"That in clause (2) of article 51, for the words 'hold office for the full term of five years' the words 'hold office for the balance of term of five years' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1193, second alternative, standing in the name of Mr. Mohd. Tahir.

The question is:

"That for article 51 the following be substituted:—

'51. If the office of the President becomes vacant by reason of his death, resignation, removal or otherwise, the Vice-President shall act as President for the remaining term of office in which the vacancy so occurs.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 51 stand part of the Constitution."

The motion was adopted.

Article 51 was added to the Constitution.

New Article 51-A

Mr. Vice-President : Now we come to amendment No. 1199 standing in the name of Prof. K. T. Shah.

Prof. K. T. Shah : Sir, am I allowed to move the second part of the amendment relating to pension?

Mr. Vice-President : The question of pension to the President was dealt with in a former amendment by you?

Prof. K. T. Shah : Yes, Sir, that is why I asked the question.

Mr. Vice-President : Then the second part may be left out.

Prof. K. T. Shah : Then I will not move this amendment.

Article 52

Mr. Vice-President : Then we come to article 52.

I find the amendment deals with a matter which is concerned with article 1 and I disallow it on the understanding that if any similar change is made in article 1 then the Drafting Committee itself will make the change in the course of the Third Reading. Are you willing to accept that, Mr. Kamath?

Shri H. V. Kamath : I will not move the amendment, Sir.

Mr. Vice-President : So, I can put article 52 to vote.

The question is :

"That article 52 stand part of the Constitution."

That motion was adopted.

Article 52 was added to the Constitution.

Article 53

Mr. Vice-President : Then we come to article 53.

Amendment No. 1201 is being disallowed because it has the effect of a negative vote. Amendments Nos. 1202 and 1203 seem to be identical and I therefore allow amendment No. 1202 to be moved.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in article 53, for the words 'or position of emolument' the words 'of profit' be substituted."

Mr. Vice-President : Then No. 1204 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir : I am not moving it, Sir.

Mr. Vice-President : Then amendment No. 1205 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That to the proviso to article 53, the following be added:—

'and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution'."

The provision is intended to prevent making a double profit.

Mr. Vice-President : There is one amendment sent in by Mr. Naziruddin Ahmad, No. 33. This is formal and is disallowed.

Now I am putting these amendments to vote. Has any Member anything to say on these amendments?

Shri H. V. Kamath : On a point of information, Sir, with reference to amendment No. 1205, will the Vice-President, when he acts as President, draw the salary and allowances of the President or those of the Vice-President only?

The Honourable Dr. B. R. Ambedkar: The salary of the President, salary of the office.

Mr. Vice-President: Then I am putting these amendments to vote. I shall put No. 1202 standing in the name of Dr. Ambedkar.

The question is:

"That in article 53, for the words 'or position of emolument' the words 'of profit' be substituted."

The amendment was adopted.

Mr. Vice-President: Do you want me to put your amendment to vote, Mr. Naziruddin Ahmad, which is identical with the previous one?

Mr. Naziruddin Ahmad: No. Sir.

Mr. Vice-President: Then I shall put to vote amendment No. 1205.

The question is:

"That to the proviso to article 53, the following be added :—

'and shall not be entitled to any salary or allowance payable to the Chairman of the Council of States under article 79 of this Constitution.' "

The amendment was adopted.

Mr. Vice-President: The question is:

"That article 53, as amended, stand part of the Constitution."

The motion was adopted.

Article 53, as amended, was added to the constitution.

Article 54

Mr. Vice-President: Then we come to article 54.

The motion before the House is:

"That article 54 form part of the Constitution."

There is amendment No. 1206 standing in the name of Mr. Mohd. Tahir.

Mr. Mohd. Tahir: I am not moving it, Sir.

Mr. Vice-President: Then No. 1207. As amendment No. 1185 has been disallowed.....

Mr. Naziruddin Ahmad: This is a different situation altogether, Sir. I shall show it in a minute.

Mr. Vice-President: All right.

Mr. Naziruddin Ahmad: Sir, I beg to move :

"That in clause (1) of article 54, for the words 'date on which', the words 'time when' be substituted."

Sir, I shall be extremely short. These words occur in clause (1) of article 54. It says that the Vice-President shall act as the President during a vacancy 'until the *date* on which' a newly elected President enters upon his office. I shall ask the House to consider only one example. Suppose the Vice-President acts in a vacancy in the President's office and a new President is elected and enters upon his office at noon on the 1st of January. By this clause it is laid down that the Vice-President shall act as President 'until the date on which' the new President enters upon his office. So he can act only up to the 31st of December, because he can act only, "until the *date* on which" the new President enters upon his office which is the 1st of January. From the midnight of the 31st December till the noon of the 1st January when the new President enters upon his office, there will be no one to preside over the functions of the Government of India. There will be no President; there will be no Vice-President. The amendment seeks to fill up this political vacuum.

Mr. Vice-President: Amendment Nos. 1208 and 1209 are merely verbal and are therefore disallowed.

[Mr. Vice-President]

Amendment Nos. 1211 and 1210 are of similar import but the former is more comprehensive and may be moved.

The Honourable Dr. B. R. Ambedkar: Sir, I move :

"That to clause (3) of article 54, the following be added :—

'and be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule'."

This merely makes good an omission in the Draft Constitution.

Mr. Vice-President: Amendment Nos. 1212 and 1213 have been blocked as article 49 has been adopted.

Shri H. V. Kamath: Sir, with regard to amendment No. 1211 moved by the Honourable Dr. Ambedkar I would like to say something. He said a short while ago that the Vice-President will have the same emoluments and allowances as the President while acting as such, whereas under this amendment he will "be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule". If the Vice-President acts as President why make a distinction like this that until Parliament enacts in that behalf he will get emoluments and allowances according to the Second Schedule. When he acts as President he must get the emoluments of the President all the time and I should like to know why this difference is made.

Pandit Thakur Dass Bhargava: Sir, article 54 (3) says :

"The Vice-President shall, during, and in respect of, the period while he is so acting as, or discharging the functions of the President, have all the powers and immunities of the President."

The amendment which has been moved by Dr. Ambedkar speaks of privileges, emoluments and allowances but there is no reference to the duties and liabilities of the Vice-President when he is acting as President. If the Vice-President violates the constitution there is no provision that he should be impeached or dealt with in any manner.

When we proceed further to article 56 we find that by a resolution of both House he can be made to vacate his office. But in regard to the violation of the Constitution and in regard to the failure of discharge of his duties there is no provision. When he is acting as President he should be liable to the same liabilities and duties as the President. Therefore I would have liked that the words "duties and liabilities" were inserted after the words "powers and immunities" which would have met the exigencies of the circumstances. I have given an amendment to this effect but since it has not been circulated I do not propose to move it formally but I would like Dr. Ambedkar to consider the proposition of the addition of the words "duties and liabilities" after the words "powers and immunities", which will make the section complete and make up the obvious lacuna.

The Honourable Dr. B. R. Ambedkar: Mr. Vice-President, I find that in the amendments that have been moved there are really three points which have been raised. One point which has been raised by my friend Mr. Naziruddin Ahmad relates to time. We all know by now how very meticulous my friend Mr. Naziruddin Ahmad is and he wants to have the Constitution specifically state the time when a President frees himself from office and another person takes over that office. I do not know whether so much meticulousness is necessary in this Constitution. However, what I find difficult to accept in the amendment which he has moved is that he has not particularised what is system of timing which he has in mind. Is it the Greenwich time, the Standard time, the Bombay or Calcutta time? .....

Mr. Naziruddin Ahmad: I mean the actual time of appointment.

Dr. B. R. Ambedkar: What is the time may be very different. Unless he prescribes the system I do not think that the introduction of the word time introduces any greater clarity or definiteness at all.

Secondly, so far as this particular clause is concerned I find that his amendment is quite unnecessary, because if he will read sub-clause (1) of article 54 he will see that it is stated "to fill such vacancy enters upon his office". Surely the entering upon office will be at sometime in the day—it may be midnight or it may be 12 o'clock in the day. Therefore time is specified so to say by implication and this amendment is there for quite unnecessary.....

Mr. Naziruddin Ahmad: The clause provides that the Vice-President shall act until the 'date' on which the new President enters upon his office and not the time when he does so.

The Honourable Dr. B. R. Ambedkar: Surely it will be sometime on some day on which he will enter the office. He may probably consult an astrologer to find out what is the auspicious moment. However, the amendment is quite unnecessary.

My Friend Mr. Kamath said that in replying to the debate on the previous article I stated or rather in moving my amendment I stated that the Vice-President when acting as the President shall have the same emoluments as the President. He found some difficulty in reconciling that statement with the amendment which I have moved, which gives the Parliament the power to fix the salary of the Vice-President when acting as the President. If my Friend Mr. Kamath were to turn to page 161 of the Draft Constitution he will find that there is a schedule fixing the salary of the President and paragraph 5 of that schedule definitely provides for the salary of the President. Surely when a person is acting as the President, no matter at what early stage in life he has climbed to that post, he will be entitled to get that salary according to this Constitution. But it was felt that it might be necessary to leave the matter to Parliament to fix a different scale of salary for a person who is assuming the office of the President expressly for a very short duration. Parliament may not like to give him the same salary, because the tenure of his office is certainly not of the same duration as that of the President himself. Consequently, if Parliament makes no provision, then he gets the salary of the President. But Parliament may make provision to give him a different salary. It is for that purpose the amendment has been moved.

Shri H. V. Kamath: Sir, may I invite the attention of my honourable Friend Dr. Ambedkar to article 48 clause (4) which lays down that the emoluments and allowances of the President shall not be diminished during his term of office? Am I to understand that you make a distinction between the Vice-President acting as President and the President?

The Honourable Dr. B. R. Ambedkar: Yes, certainly.

Shri H. V. Kamath: Sir, just now when I raised objection to an amendment to the last article, Dr. Ambedkar said that the Vice-President shall draw the salary and allowances of the President while acting as President.

The Honourable Dr. B. R. Ambedkar: Unless Parliament otherwise provides, the Vice-President gets the salary of the President when he acts for him. There is no reason why Parliament should not be given authority to fix the scales of pay of a President who may be therefor a short duration.

Pandit Bhargava raised another point and that was to the effect that there was no provision for the impeachment of the Vice-President when acting as President. Obviously when a Vice-President becomes the President, all the duties and obligations which are imposed upon the President fall upon him without making any express mention of the fact at all. If during his tenure of

[The Honourable Dr. B. R. Ambedkar]

office as President the Vice-President commits any of the offences or acts which expose the President to the risk of being impeached, he will not have any kind of immunity by reason of the fact that he is either a Vice-President or is acting as President *pro tempore.* There is therefore no necessity for making any provision for it.

Mr. Naziruddin Ahmad: Mr. Vice-President, may I ask.....

The Honourable Dr. B. R. Ambedkar: I do not submit myself to any cross examination at this stage.

Mr. Vice-President: Mr. Naziruddin Ahmad may go back to his seat.

Mr. Naziruddin Ahmad: I want to draw the attention of the Honourable Dr. Ambedkar to an oversight.

Mr. Vice-President: He refuses to listen to it. What can I do? I cannot compel him to listen.

Mr. Naziruddin Ahmad: No one can compel him. The point is that in clause (3) of article 54.....

Mr. Vice-President: I am going to put the amendment to vote. Dr. Ambedkar has said that he will not give any reply.

Mr. Naziruddin Ahmad: I hope he will reconsider the matter.

Mr. Vice-President: I have not called upon Mr. Naziruddin Ahmad to speak.

Mr. Naziruddin Ahmad: Sir. I want only to draw the attention of the House to a point which might influence the votes.

Mr. Vice-President: Why not do so at the third reading stage? I am going to put the amendment to vote.

Mr. Naziruddin Ahmad: But, Sir, this is a matter of great importance.

Mr. Vice-President: You think so. May I ask you respectfully to go back to your seat?

Mr. Naziruddin Ahmad: I shall comply with your request.

Mr. Vice-President: I shall now put amendment No. 1205 standing in the name of Mr. Naziruddin Ahmad to vote.

The question is:

"That in clause (1) of article 54, for the words 'date on which', the words 'time when' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That to clause (3) of article 54, the following be added:—

'and be entitled to such privileges, emoluments, and allowances as may be determined by Parliament by law and until provision in that behalf is so made, such privileges, emoluments and allowances as are specified in the Second Schedule'."

The amendment was adopted.

Mr. Vice-President: The question is:

"That in clause (3) of article 54, after the words 'have all the powers', the words 'and privileges, emoluments' be added."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 54, as amended, stand part of the Constitution."

The motion was adopted.

Article 54, as amended, was added to the Constitution.

Article 55

Mr. Vice-President: The House will now take up for consideration article 55.

The first amendment to this article stands in the name of Shri Himmat Singh K. Maheshwari. As the Member is not in the House it is not moved.

Amendment Nos. 1215 of Mohd. Tahir and 1218 of Prof. Shah are of similar import. Prof. Shah may move his Amendment.

Prof. K. T. Shah: Mr. Vice-President, I beg to move:

"That in clause (1) of article 55 for the words 'by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot' the words 'at the same time and in the same manner as the President' be substituted."

May I point out that, though it goes against myself this was in consonance with the method of election of the President as originally suggested by me in an amendment on adult franchise which this House has been pleased to reject? I wonder whether I would be quite in order to move it.

Mr. Vice-President: I would ask the honourable Member to use his discretion.

Prof. K. T. Shah: I am not fond of hearing my own voice. I only want to point out the discrepancy that is there.

Mr. Vice-President: I think then the honourable Member had better not move it. This need not, therefore, be put to vote.

Mr. Mohd. Tahir: I beg to move:

"That for clause (1) article 55, the following be substituted:

'(1) The Vice-President shall be elected in the same manner as provided in article 43'."

Article 43 lays down the manner in which the President is to be elected. I think, Sir, that so far as the election of the President and the Vice-President is concerned, there should not be any distinction as to the manner thereof. As for the position of the Vice-President, it is the same as that of the President. Of course there is the division of labour and division of work. They occupy more or less the same position and therefore there should be no distinction between them in the manner of their election.

My second point is that the President is to be elected by both Houses of Parliament as well as by the members of the Legislatures of the States. If we do not elect a Vice-President in the same manner, it means that we are going to deprive the Legislatures of the States of the right of electing him. Therefore it would be quite unfair to the members of the Legislatures of the States to deprive them of the power to elect the Vice-President. I have therefore suggested in this amendment that the Vice-President should also be elected in the same manner as the President.

(Amendment Nos. 1216 and 1217 were not moved.)

Mr. Naziruddin Ahmad: Mr. Vice-President, Sir, I beg to move :

"That in clause (1) of article 55 the words 'assembled at a joint meeting' be omitted and the clause as so amended, be renumbered as article 55."

Sir, to my mind, the words which I want to delete create an anomaly. Sir, the provision is to this effect: "The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting." I submit that for the purpose of electing the Vice-President, the members of both Houses of Parliament must *vote* but they need not at all *assemble at a meeting*. They need not assemble and there need be no meeting. We are familiar with

[Mr. Naziruddin Ahmad]

the system of election by members to various Committees. The members do not at all meet at a meeting. They are not required even to assemble formally in the House to be presided by the Speaker or the President or the Vice-President or the Deputy Speaker as the case may be. They are not even required or expected to assemble at the same time. There is no joint meeting or any meeting at all. There is no quorum required. They may come between the prescribed hours to the appointed place and the Returning Officer or the Polling Officer records their votes. Even if one member comes and votes, it is enough. No meeting implying the simultaneous presence of a certain number of members is necessary. Sir, the idea of any meeting or a joint meeting is absolutely inapplicable to a matter of votes. It is for this reason that I am asking the House to accept the deletion of the words "assembled at a joint meeting". If these words are deleted, the clause will read thus:

"The Vice-President shall be elected by the members of both Houses of Parliament ..... by means of single transferable vote."

The members need not at all assemble at a meeting. That would involve a number of conditions and a set paraphernalia under the procedure rules which do not apply to a matter of voting. I submit that these words are unnecessary and are misleading and should be deleted. Then the second part of the amendment is to the effect that this may be regarded as an independent article. That is merely formal. The first part of the amendment, I submit, should be carefully considered.

Mr. Vice-President: Amendment No. 1220 standing in the names of Begum Aizaz Rasul and Mr. Naziruddin Ahmad. The Begum Sahiba is not here and so you can move it, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad: Sir, I beg to move:

"That in clause (1) of article 55, the words 'in accordance with system of proportional representation' be deleted."

Sir, the matter has been much mooted in the House as to whether there can be proportional representation when there is only one seat to be filled. There may be many candidates for one seat and so the votes may be transferable. By transferability you elect the most popular man. I will give an illustration. If there are one hundred voters and there are ten seats to be filled up, then ten members representing one group can elect one member and that one member elected by the ten electors represents one-tenth of the electors and that is proportional representation in the body elected. Sir, I want to draw the attention of Dr. Ambedkar to this point. In fact I find that he often misses my points and forgets to reply. I am particularly anxious to draw his attention to this point and it is this. If there are one hundred voters and ten seats, then ten voters forming a group can elect one and that one elected by the said ten voters represents one-tenth of the seats by proportional representation. He represents one-tenth of the voters. Proportional representation applies to a plurality of seats. There can be no proportional representation where only one person is to be elected. He cannot split up his person and represent separately a one-tenth and nine-tenths fractions of electors. As for instance, if you, Sir, are elected by this House, then you do not by any means proportionately represent different groups of the electors. There cannot be any proportional representation in the case of one man seat.

With regard to the transfer of votes, that is a proposition which is really acceptable. If at the first counting of votes the first man gets less than half the votes polled, then at the second counting the vote's transferred are again appropriately allocated, the first man at the first calculation may not be the first man in the second or subsequent calculations. By means of the device of the

transferability of votes, the person or persons having the largest support gets or get elected. Even in cases of single seats, it is desirable to have transferable votes but there is no proportional representation, *i.e.* one man elected can not proportionally represent different groups of electors. Proportional representation according to this system is inevitable in case of a plurality of seats. But in the case of a one seat or one man election, he does not represent any section proportionately at all. Proportional representation is not applicable to a one man vacancy. I think, Sir, there has been a considerable amount of confusion about this proportional representation. I want to draw a distinction between election by proportional representation and transferability of votes. They must not be mixed up together and I think there is a risk of votes. They must not be mixed up together and I think there is a risk of these two independent categories being muddled together as part of each other.

(Amendment Nos. 1221 and 1222 were not moved.)

Mr. Vice-President : Amendment No. 1223 is disallowed as being merely verbal.

Amendment No. 1224 Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Sir I move:

"That in clause (2) of article 55, for the words 'either of Parliament or' the words 'of either House of Parliament or of a House' for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House', and for the words 'in Parliament or such Legislature, as the case may be' the words in that House' be substituted respectively."

This is only to improve the language. There is no point of substance in it.

(Amendment Nos. 1225, 1226 and 1227 were not moved.)

Mr. Vice-President : Amendment Nos. 1228 and 1229 are of similar import.

(Amendment Nos. 1228, 1229 and 1230 were not moved.)

Amendment No. 1231 standing in the name of Prof. K. T. Shah may be moved.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in sub-clause (c) of clause (3) of article 55, after the words 'Council of States' the following be added:—

'and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State, or any violation of the Constitution, or has been elected and served more than once as President or Vice-President of the Union'."

Even if the last words are not quite proper after the decision of the House on article No. 46, I trust the preceding disqualifications that I have suggested would be acceptable to the House.

Sir, there is a school of thought which seems to consider *infra dig* for this Constitution to provide specifically the disqualifications that may attach to candidates for certain offices. I am afraid, I cannot share this view, particularly as these are political offices, in which disqualifications like those enumerated above may become merely a matter of opinions and unless they are laid down positively in the Constitution, people may be found, not only having the courage which Dr. Ambedkar was pleased to doubt, but even having the effrontery, to stand as candidates after having been suspected or charged with violation of Constitution duly proved or even of treason. Treason can be even without violation of the Constitution. May I say, treason will not be called treason if it succeeds, for the very good reason that nobody would dare call it treason then. In that way of looking at it, I feel it necessary that a specific provision be made laying down disqualification on the three or four grounds that I have mentioned.

[Prof. K. T. Shah]

The violation of the Constitution or conviction for treason are items, which in regard to political offences, or in regard to political offices, cannot be merely taken for granted; we cannot, therefore, assume in safety that even if no one would have the courage, or even if nobody has the effrontery, to disregard its disqualifications clearly attaching to an individual was conceded, the electorate would have the common-sense, the decency not to return them. I for one am not so enamoured of any electorate so narrow as is provided in the Draft Constitution to trust that, by party influences, by party prejudices, it may not be possible to disregard such disqualification if the Constitution is silent on the subject. Accordingly, Sir, I commend this motion to the House.

Mr. Vice-President : The next two amendment Nos. 1232 and 1233 are disallowed as being verbal.

Amendment Nos. 1234 standing in the name of Dr. Ambedkar, 1235 and 1239 standing in the name of Mr. Naziruddin Ahmad are of similar import and I am, therefore asking Dr. Ambedkar to move his amendment, which seems to me the most comprehensive one.

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That in clause (4) of article 55, for the words 'or position of emolument' wherever they occur the words 'of profit' be substituted."

Mr. Vice-President : Amendment No. 1235 stands in the name of Mr. Naziruddin Ahmad. Does he want me to put this to the vote?

Mr. Naziruddin Ahmad : No, Sir, the previous amendment will cover it.

Mr. Vice-President : What about amendment No. 1239?

Mr. Naziruddin Ahmad : The same consideration would apply.

(Amendment No. 1236 was not moved.)

Mr. Vice-President : Amendment Nos. 1237 and 1238 are verbal and are, therefore, disallowed.

Amendment No. 1240 stands in the name of Dr. B. R. Ambedkar. He may move it.

The Honourable Dr. B. R. Ambedkar: Sir, I move:

"That for sub-clause (a) of the Explanation to clause (4) of article 55, the following be substituted:—

'(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State, of.' "

This matter has already been debated last time.

(Amendment No. 1241 was not moved.)

Mr. Vice-President : Amendment Nos. 1242, 1243 and 1244 are disallowed as being merely verbal amendments.

Amendment No. 1245 stands in the name of Prof. K. T. Shah. I think there is no use in moving this amendment.

Prof. K. T. Shah : All right, Sir.

Mr. Vice-President : Amendment Nos. 1246, 1247 and 1248 are disallowed as being verbal.

Mr. Naziruddin Ahmad : They are not 'merely' verbal; they are verbal, no doubt.

Mr. Vice-President: I am afraid, I do not agree with you.

(Amendment Nos. 1249 and 1250 were not moved.)

Mr. Vice-President : Amendment No. 1251 standing in the name of Prof. K. T. Shah, that also is blocked. Amendment Nos. 1252, 1253, 1254 and 1255—I am afraid they are also verbal and I, therefore disallow them.

Mr. Naziruddin Ahmad : Amendment No. 1255 is not verbal.

Mr. Vice-President : If it is not verbal, then it is formal.

Mr. Naziruddin Ahmad : So long as it is rejected, it does not matter how it is rejected.

(Amendment Nos. 1256 and 1257 were not moved.)

Mr. Vice-President : That brings us to the end of the amendments. The article is now open for general discussion.

Mr. Tajamul Husain : We have got ten minutes more and I shall finish before that. Mr. Vice-President, Sir, I take up first amendment No. 1215 moved by my honourable Friend Mohd. Tahir. His amendment seeks to say that the Vice-President shall be elected in the same manner as provided in article 43. Article 43 provides for the election of the President. How is he elected ? He is elected by the elected members of both the Houses of Parliament and by the elected member of both Houses of legislature in the States where there are two Houses. According to article 55 with which we are dealing, he is to be elected not in this manner, but by both the Houses of Parliament, at a joint meeting of the Parliament, the Central Legislature. I oppose this amendment because there is a difference between the President and the Vice-President. The Vice-President has to preside at the meetings of the Council of States. The President of the Republic has nothing to do with presiding at meetings of the legislature. The Vice-President has nothing to do, till he becomes the President in case of vacancy on account of death etc., with the provincial or State legislature. Therefore, article 35, as framed in the Constitution is correct, in my opinion.

The next amendment is amendment No. 1219 moved by my honourable Friend Mr. Naziruddin Ahmad. His amendment is that in clause (1) of article 55, the words "assembled at a joint meeting" be omitted. He does not want that the Vice-President should be elected at a joint meeting of the two Houses. He does not say by which House he is to be elected. Therefore, it has no sense and it should be rejected.

Next, I come to amendment No. 1220 again by Mr. Naziruddin Ahmad and Begum Aizaz Rasul, which says that in clause (1) of article 55, the words "in accordance with the system of proportional representation" be deleted. We are dealing entirely with the system of proportional representation in the election of the President. Supposing there are more than one candidate, say, three or four candidates. That is the safest method, and by the process of elimination you know exactly the votes secured by each according to the system of proportional representation by means of single transferable vote, I presume. That is the best system in a country like this. Therefore, I oppose that amendment also.

Next, I come to the amendment moved by the Honourable Member in charge of this Draft Constitution, the Honourable Dr. Ambedkar. That is amendment No. 1224. I have the honour to oppose this also. My submission is this. When the Honourable Dr. Ambedkar was speaking, I was busy; otherwise, I would have risen on a point of order. My point of order is this and it could be raised even now. A member cannot move many things in one motion. There must be one specific resolution or motion. He has brought in three or four things. If you read this, you will have to rule it out of order. It is hopelessly illegal. I do not know how he could have moved four things in one amendment. He says that in clause (2) of article 55 for the words "either of Parliament or" the words "of either House of Parliament or of a House", for the words "member of Parliament or" the words "member of either

[Mr. Tajamul Husain]

House of Parliament or of a House" and for the words "in Parliament or such legislature, as the case may be" the words "in that House" be substituted. These are four separate amendments. I may accept one and reject the other. Therefore, I think you should rule it out of order; that would be a very good thing.

Mr. Vice-President : Unfortunately, it cannot be done now. Your advice comes rather too late.

Mr. Tajamul Husain : On a point of order, I am sure Dr. Ambedkar will agree it is never too late.

The Honourable Dr. B. R. Ambedkar : The Office could have done it.

Mr. Tajamul Husain : I hope he will agree if I say that a point of law could be raised at any time. At any time, you can say it is out of order.

Mr. Vice-President : Probably he took advantage of my ignorance of procedure.

Mr. Tajamul Husain : Because of my mistake, I do not see any reason why a wrong thing should go in. It all depends on your ruling.

Next I come to amendment No. 1231 moved by my honourable Friend Prof. K. T. Shah. He says that in sub-clause (c) of clause (3) of article 55, after the words "Council of States" the following be added: "and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State or any violation of the Constitution or has been elected and served more than once as President or Vice-President of the Union." I think this is hopelessly wrong. I cannot understand why this amendment has been allowed. You will find article 83 which deals with the disqualifications of the members. Article 83 says that a person shall be disqualified for being chosen as, and for being a member of either House of Parliament if he holds any office of profit under the Government of India or the Government of any State, if he is of unsound mind and stands so declared by a competent court, if he is an undischarged insolvent, if he is under any acknowledgment of allegiance or adherence to a foreign power, or is a subject or a citizen or entitled to the rights or privileges of a subject or a citizen of a foreign power, and if he is so disqualified by or under any law made by Parliament. Everything comes there; all these things are mentioned in article 83. Therefore, according to article 83, he cannot be a member and is not entitled to be a member of the Council of States. According to article 55, sub-clause (3), he has to be qualified for election as a member of the Council of States. Therefore to add this in clause (3) has no sense, is meaningless. I am sure Dr. Ambedkar will never accept it and the House will not accept it.

I have divided the amendment into two parts; I have already dealt with the first part. The second part of the amendment says, "or has been elected and served more than once as President or Vice-President of the Union". Supposing he has served as Vice-President or President for one term, why prevent him from becoming Vice-President again if he happens to be a very qualified man and the people want him and the legislature wants him? I had sent in an amendment to the effect that President could be elected more than once, but as I was not in the House I could not move it; but it was accepted by the House that the President could be elected more than once. Therefore, why prevent the Vice-President from being elected more than once?

Sir, it is exactly 1.30 now and I have finished.

Mr. Vice-President : The House stands adjourned to ten of the clock tomorrow.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 29th December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 29*th December* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H.C. Mookherjee) in the Chair.

TAKING THE PLEDGE AND SIGNING THE REGISTER

The following members took the pledge and signed the Register:—

1. Shrimati Annie Mascarene (Travancore).

2. Shri Sita Ram Jaju, [United State of Gwalior-Indore-Malwa (Madhya Bharat)].

DRAFT CONSTITUTION—*(Contd.)*

Article 55—*(Contd.)*

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on article 55. Mr. Bharathi.

Shri L. Krishnaswami Bharathi (Madras : General): Mr. Vice-President, Sir, article 55 is under general discussion. The House might remember that yesterday Mr. Naziruddin Ahmad moved an amendment standing in his name under No. 1220. Though we cannot straightaway accept the amendment, I felt there was very great force in his contention. His amendment was to delete the words 'proportional representation' in article 55. As I understood him, he had no objection to the transferability of vote, but he took objection to the phraseology of that system. In fact, he said that there is no question of proportional representation when the candidate to be elected is only one. There is no idea of proportional representation in such a case of single-member constituency. That word means in the resultant election there must be some proportion; in proportion to the strength of the electors, you get seats there. And therefore he took objection to the words 'proportional representation'.

I happened to go through some literature on the subject and I found there is great force in what he said. The same difficulty was felt in England, and there was a Royal Commission to go into the question of all electoral systems. As a result, two bills were introduced in 1908 in the House of Commons by Mr. Robertson and they found that 'proportional representation' was not the proper word. The system is all right, *i.e.,* the transferability of voting, when there is a multiplicity of candidates; when the election to be made is only for one candidate, it is obvious that in order to get an absolute majority, we must have what is known as transferability. That is admitted. But in the case of single-member constituency they have hit upon the word—the proper word is what they call 'alternative vote'. I only take leave, Sir, to read an authority on the subject—Humphreys—in this connection. This is what the author says:—

"In recent years the phrase *'alternative vote'* has been employed in England, and was adopted by the Royal Commission on Electoral Systems *as a means of distinguishing* the use of the transferable vote in single member constituencies from its use in multi-member constituencies."

[Shri L. Krishnaswami Bharathi]

There is a difference made in multi-member constituencies, and the words 'proportional representation' have meaning and therefore though the transferability is maintained, in order to distinguish from the system of multi-member constituencies the single-member constituencies, they used the word 'alternative vote'. The memorandum of Mr. Robertson's Bill goes on to say—"The principle of the alternative vote is extremely simple. Its purpose and mechanism is set forth in the memorandum of Mr. Robertson's Bill, which is as follows:—

"The object is to ensure that in a Parliamentary election effect shall be given as far as possible to the wishes of the majority of electors voting. Under the present system when there are more than two candidates for one seat it is possible that the member elected may be chosen by a majority of the voters."

"The Bill proposed to allow electors to indicate on their ballot papers to what candidate they would wish their votes to be transferred if the candidate of their first choice is third or lower on the poll and no candidate has an absolute majority. It thus seeks to accomplish by one operation the effect of a second ballot."

I therefore, think that this word which has been in vogue not only in England but in the Australian States also ever since 1911 must be taken advantage of and incorporated in our constitution so as to distinguish the present case from the case of plural-members constituencies and to avoid the absurdity of having the word 'proportional representation'.

It may not be possible straightaway to accept this suggestion, but I would request Dr. Ambedkar and the Constitutional Adviser, Sir B. N. Rau to give consideration to this idea. There is no particular reason why, when an exact and precise word is there, which has been in use in England, we should not have it. After all, we have to make some rules or lay down some process to indicate what exactly is meant by this system. There are a number of systems even in the single transferable vote system— the Hare system and others. We may have to bring in a bill or some rule to indicate the difference. Objection may be raised that we are now familiar with the word— proportional representation. But, I submit that we are not familiar with it in the case of single member constituencies, and this is the first time that we are having a single member constituency. Therefore, it is but proper that we should think of the word— "alternative vote", as it was accepted by the Royal Commission or Electoral System.

Thank you, Sir.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I regret that I cannot accept any of the amendments which have been moved, to this article. So far as the general debate is concerned, I think there are only two amendments which call for any reply. The first is the amendment moved by Mr. Tahir, No. 1215. Mr. Tahir's amendment proposes that the same system of election which has been prescribed for the President should be made applicable to the election of the Vice-President. Now, Sir, the difference which has been made in the Draft Constitution between the system of election to the Presidentship and the system of election for the Vice-Presidentship is based upon the functions which the two dignitaries are supposed to discharge. The President is the Head of the State and his powers extend both to the administration by the Centre as well as of the States. Consequently, it is necessary that in his election, not only Members of Parliament should play their part, but the Members of the State Legislatures should also have a voice. But when we come to the Vice-President, his normal functions are merely to preside over the Council of States. It is only on a rare occasion, and that too for a temporary

period, that he may be called upon to assume the duties of a President. That being so, it does not seem necessary that the Members of the State Legislatures should also be invited to take part in the election of the Vice-President. That is the justification why the Draft Constitution has made a distinction in the modes of election of these two dignitaries.

The second amendment which calls for a reply is the amendment moved by Mr. Naziruddin Ahmad, No. 1219. He has suggested that the word "assembled" should be dropped. Now, the reason why the word "assembled" has been introduced in this article is to avoid election being conducted by posting of ballot papers. We all know that the postal system, when used for the purpose of electioneering is liable to result in failure. Either the ballot papers posted may not reach the destination and may be lost in transit; or it is perfectly possible for a candidate to send round his agents in order to collect the ballot papers so that he may obtain possession of them, sign them himself and send them on without giving any opportunity to the elector himself to exercise his freedom in the matter of election. It is for this reason that it was decided that the election should take place when the two Houses assemble, so as to prevent the misuse of posting. Now, I do not think that the calling together of a meeting of the Members of Parliament for this purpose is going to introduce in practice a difficulty, or is going to introduce any inconvenience. After all, Members of Parliament would be meeting together for the purposes of legislation, and it would be perfectly possible to have the election during one of those sessions. I, therefore, submit that the original language is the more justifiable one, in view of the circumstances I have mentioned.

Now, Sir, with regard to Prof. K. T. Shah's amendment that the disqualifications with regard to the Vice-President should be specified in the Constitution itself, that is a matter which I have already dealt with when replying to a similar amendment moved by him with regard to the President, and I said that this is a matter which could be provided for by law made by Parliament.

With regard to the suggestion which has been made both by Mr. Bharathi and Mr. Naziruddin Ahmad about the use of the words "alternative vote", all I can say is this. If it is merely a matter of change of language, it might be possible for the Drafting Committee at a later stage, to consider this matter. But if— and I am not prepared to commit myself one way or the other— the alternative vote does involve some change of substance, then I am afraid it will not be possible for us to consider this matter at any stage at all.

Mr. Vice-President : I am now going to put the different amendments to vote, one by one.

The question is:

"That for clause (1) of article 55 the following be substituted:

'(1) The Vice-President shall be elected in the same manner as provided in article 43.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 55, the words 'assembled at a joint meeting' be omitted, and the clause as so amended, be re-numbered as article 55."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1220, standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, in view of the assurance given that it will be considered by the Drafting Committee, I will not press this amendment.

Mr. Vice-President : Is there the necessary permission of the House not to put it to the vote?

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : The question is:

"That in clause (2) of article 55, for the words 'either of Parliament or' the words 'of either House of Parliament or of a House', for the words 'member of Parliament or' the words 'member of either House of Parliament or of a House', and for the words 'in Parliament or such Legislature, as the case may be' the words 'in that House' be substituted respectively."

The amendment was adopted.

Mr. Vice-President : The question is

"That in sub-clause (c) of clause (3) of article 55, after the words 'Council of State', the following be added:—

'and is not disqualified by reason of any conviction for treason, or any offence against the safety, security or integrity of the State, or any violation of the Constitution, or has been elected and served more than once as President or Vice-President of the Union.' "

The amendment was negatived.

Mr. Vice-President : The question is:

That in clause (4) of article 55, for the words "or position of emolument" wherever they occur the words "of profit" be substituted.

The amendment was adopted.

Mr. Vice-President : The question is:

That for sub-clause (a) of the Explanation to clause (4) of article 55, the following be substituted:

"(a) he is the Governor of any State for the time being specified in Part I of the First Schedule or is a minister either for India or for any such State, or".

The amendment was adopted.

Mr. Vice-President : The question is:

That article 55, as amended, stand part of the Constitution.

The motion was adopted.

Article 55, as amended, was added to the Constitution.

Article 56.

Mr. Vice-President : We now proceed to article 56.

The motion is:

That article 55 form part of the Constitution.

The first amendment is 1258. The first alternative is disallowed as being verbal. The second alternative may be moved.

(Second alternative of amendment No. 1258 was not moved.)

Prof. Shah—Amendment No. 1259.

Prof. K. T. Shah (Bihar: General): Mr. Vice-President, Sir, I beg to move:

That article 56 be numbered as clause (1) of the article and the following new clauses be added after that:

(2) The Vice-President shall have an official residence and there shall be paid to the Vice-President such emoluments and allowances, not exceeding those granted to the President, as may be determined by Parliament by law, and until provision in that behalf is made by Act of Parliament, the Vice- President shall be paid a monthly salary of Rs. 4,500.

(3) The emoluments and allowances of the Vice-President shall not be diminished during his term of office.

(4) Every Vice-President, on completion of his term of office and retirement shall be given such pension or allowance during the rest of his life as Parliament may by law determine, provided that, during the life time of any such Vice-President in retirement and pensioned, such pension or allowance shall not be diminished.' "

In presenting this motion to the House, I have to put forward three grounds which I hope will commend themselves to the House. The provision of an official residence for the Vice-President is no less important than that for the President. I hold it, Sir, that high officers of Government should not be obliged to rent their premises, and be in anyway obliged to the landlord by hiring accommodation from them. Not only is the great evil of Pugree system that is going on at the present time under the Rent control system in itself a source of great temptation, and so must be condemned, and kept out of access to such exalted dignitaries. The relationship of landlord and tenant, where under quite possibly such important officials may fall into a position of undue influence being exercised upon them, and their conduct in their office be affected thereby, is by itself a source of evil.

It is therefore a simple proposition which I trust no one would take exception to, *viz.,* that high Government officials, who have in their power executive or other influence to wield, should not be at the mercy or under the influence of any private individual who may seek his own advantage through that influence.

I am aware that the Vice-President is, under this Constitution, not given any position of executive power or patronage; and, as such, it is quite arguable that in his case, at any rate, the main ground on which I urge this will not be applicable. But on the other hand, I would submit that after all the Vice-President would be the second personage in the country in point of social status and importance. Even if he has no executive authority or political patronage to give, he is a personage and dignitary who should be safe guarded against all temptation. It is but right that he should be saved from any chance even of a possible misuse of his position to the disadvantage of public service, and to the advantage of some private individual having his ear, so to say.

The second point is in regard to the Vice-President's salary and allowances. This, under my amendment, may be provided for by Act of Parliament. It is not that it is to be provided either by a motion in Parliament where the motion may be carried by simple force of party majority; or that it is an *ad hoc* decision to be varied from time to time. I want this also to be fixed by law; and I want the law to be quite clear that during the tenure of the office of the Vice-President, the salary, allowances and emoluments, shall not be varied to his prejudice or diminished.

The terms I have used are some what different from being "varied to his prejudice". I simply suggest that they shall not be diminished in figures. This, again, is a proposition which ought not to be taken exception to. The Vice-President will be the President of the Council of States; and he would have other active duties or possible functions, and a social position of high eminence to maintain. He would be, however, ornamental, a whole-time officer. He should not be, therefore, allowed or permitted to engage in any private trade, business, industry, occupation or profession, whereby he may be obliged to neglect any part of his duties. It is, therefore, necessary that a reasonable salary or emoluments should be provided for him.

I add the limiting clause also that such salary, etc., should not exceed that of the President. It must, however, be sufficient to enable the Vice-President

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to maintain his place with the dignity and status that we associate with such high offices.

Finally, I have asked that a pension, or retirement allowance, be given to the Vice-President, as I had proposed it should be given to the President as well. I urged on a former occasion that, in this country, these high offices should not be the exclusive monopoly of the rich, who may not need any allowance or any provision for them in retirement. They are in such a position because by other means they are able to make sufficient provision for themselves not to care for the pittance that may be allowed by the State by way of pension.

I hope our Government, under this Constitution, will not be charged with the accusation, which has been hurled against it that it is intended to be a Government of the Rich, for the Rich, by the Rich. Let it be, at least in theory, a Government under a Constitution which has provided equal opportunities for all, and which will, therefore, make it possible,— even if it is theoretically possible only,— for the poorest in the land to a spire to such offices and to do so without any risk of being further impoverished or burdened with debt.

I accordingly desire that a proper provision be made for such officers on their retirement, so that they may be free from temptation, from want, and from penury; so that they may end their days, after a life-time in the country's service, in peace and comfort, if not in luxury.

I do not, of course, desire that any "luxury" should be available to these personages, which is not available to the rest of the country. But I do not want, also, to conceal the view that, even if the holder of such office has held it only once for the full period, he should be given a retirement pension.

An argument was urged on a previous occasion, when a similar proposition was put forward to the House by me, that I had not been particularly careful as regards what would happen if the same person should once again hold a similar office, or any other office, and was as such in receipt of the salary etc., attached there to, I trust commonsense will enable those who object in this manner to perceive that, such pension would not be paid or payable, if there is concurrently any other office held. It is distinctly and exclusively a pension or allowance payable only on retirement, and while in retirement. I was, therefore, amazed to hear the argument put forward the other day that I had not mentioned whether the President, for example, if he retired and was in possession of a national pension, whether he would be allowed any other salary; or, if he was reelected, whether any such salary would be continued side by side with pension. I can only characterise such opposition as arising merely out of prejudice, and not out of any reasoned, rational perception of the point I have been urging. I am powerless to fight against such prejudice, and, therefore, trust to the good sense of the House, and commend my motion to the House as such.

Mr. Vice-President : There are two amendments standing in the name of Pandit Thakur Dass Bhargava. Is the honourable Member going to move them?

Pandit Thakur Dass Bhargava (East Punjab: General): I am not moving these two amendments.

Mr. Vice-President : Amendments 1260, 1261 and 1262 are verbal amendments and as such they are disallowed.

Amendment 1263 stands in the name of Prof. K. T. Shah. This may be moved.

Prof. K. T. Shah : Mr. Vice-President, I beg to move:

"That in paragraph (b) of the proviso to article 56, after the words "be removed from his office for" the following be added:

> 'reason duly proved, or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption, duly proved.' "

This amendment also embodies very simple propositions, which however, need to be stated. I hold the view, Sir, that if you leave the Constitution,— and, at that, a written Constitution, unbacked by any conventions or precedents, without clear statements of such possibilities, then you open the door wide to great abuses of the clauses, or of the practices that may prevail in the actual working of the Constitution.

It is a different matter in a country, where, even though the Constitution is not a written document, there are well-established conventions or precedents, which guide the conduct of public men in office. In this country, we are, for ourselves and by ourselves, making a Constitution for the first time. In this country we are taking the responsibility of shaping public morality, and the canons of governance for the first time in our hands. At this time, with a written Constitution. I for one do not think it right, that we should leave such important matters merely to the so-called commonsense, the sense of propriety of the public at large or public opinion to regulate. I, for one, think it is necessary that, categorically, the Constitution must expressly state these matters.

The result would be that the holders of big offices may be removed from their offices for given reasons. All the items on which I desire that such office holders may be removed from their office, or may be declared unqualified, are those which occur not in one but in several Constitutions of leading nations, and several more of subordinate bodies like Municipalities even in this country.

That being so, I think no exception should be taken to this proposition namely, that anybody convicted of treason, or of an offence against the Constitution, or for violation of the Constitution or involving moral turpitude like bribery and corruption, should continue in his office, despite such a thing being urged and proved against him.

The question of bribery and corruption involving moral turpitude is a much more serious as well as a much more difficult proposition to establish. It is difficult, not only because those who take bribes take jolly good care that they are not easily caught. The evidence will not be quite easily obtainable, I would not, of course, say that, merely on suspicion of high officers taking bribes, they should be condemned. On the contrary, they must be properly placed before the duly constituted courts of justice. They must be duly tried. They must be fully heard in their defence; and every facility should be given to them to exculpate themselves from any such charge, if they have means of doing so. I am perfectly aware that those who enjoy high position, and who hold high offices, live in glass houses. Their every act, every utterance, every movement, is liable not only to public comment, but also to public misinterpretation.

I would accordingly not throw them to the wolves so summarily or unreservedly to say that on a mere charge or suspicion they should be condemned. But if, after proper trial under proper procedure, before a competent court of law, unsuspected of any partiality for, or any favour to, anybody, they are proved guilty of having taken bribes, or in any way of having been liable to undesirable influences, then it is but right and proper that they should be removed from their high office and prevented from further misgoverning the country.

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The same argument applies to mental and physical incapacity. Sir, if we are indifferent, if we do not insist upon this, also, it is not that the individual holding such office may benefit; it is that those concerns, those departments, those interests which are placed in his charge may suffer. It is, therefore, purely in the interests of public service, in the interests of public morality and efficiency of the administration that I am suggesting the inclusion in the Constitution in express and unambiguous terms that those proved unfit, those suffering from mental or physical disability should be removed from their offices. This, I trust Sir, will not be taken exception to, and would be accepted, if not by the draftsman, at least by the general good sense of the House.

Mr. Vice-President : Amendment No. 1264 standing in the name of Mr. Kamath, and 1266 standing in the names of Mr. Tahir and Saiyid Jafar Imam, and 1269 standing in the name of Mr. Mahboob Ali Baig, are of similar import. Of these amendment No. 1264 seems the most comprehensible and Mr. Kamath may move it. Is the honourable Member moving it?

Shri H. V. Kamath (C. P. & Berar : General): Yes, Sir. But it has been my misfortune again that four separate amendments which I sent in have been lumped together as one amendment, and so I am labouring under a handicap. I wish to move only the third part of this amendment. There are four amendments lumped together in this one. I do not blame the office for that.....

Mr. Vice-President : Does the honourable Member propose to move the other three also?

Shri H. V. Kamath : Only the third one.

Sir, I move:

"That in clause (b) of the proviso to article 56, for the words 'agreed to by the House of the People', the words 'agreed to by a similar resolution of the House of the People' be substituted."

I wonder why the Drafting Committee preferred to be so delightfully vague as they have been in this part of the proviso. The draft on this article merely says that the resolution should be agreed to by the House of the People. It is admitted on all hands that brevity, clarity and precision should be the hallmarks of a sound Constitution. Nobody will however say that our Constitution is noted for its brevity. We take pride in the fact that our Constitution is the bulkiest in the world. Some are more proud of this fact than others. Yet, in parts of the Constitution, I find that the Drafting Committee have been seized by a strange affection for brevity, but unfortunately at the expense of clarity and precision. Here for instance they have not laid down what majority should be required for the resolution. Whether it should be unanimously agreed to, or whether it should be two-thirds majority or three-fourths majority or a simple majority has not been laid down in the proviso. I hope Dr. Ambedkar will pay some attention to this point and reply to it.

I would like to draw the attention of the House to article 50 regarding the impeachment and removal from office of the President, which we passed yesterday. There we laid down that the majority of the House in either case is required for the removal on impeachment of the President. Here is a similar article regarding the removal of the Vice-President of the Indian Republic. But strangely enough it is not stated therein clearly whether the resolution passed by a majority of all the then members of the Council of States should be agreed to by the entire House of the People or passed by a bare majority. If this article and proviso are left as they are, it will certainly be difficult later on; difficulties will be encountered. Suppose for instance the resolution is

passed by a bare majority in the Council of States. As regards the House of the People, the article is silent on the point as to what majority is required for the passing of the resolution. It is essential in my judgment that the article must specify as to what majority is required for the resolution of the Council of States to be agreed to by the House of the People. Unless this is specified this might land us in trouble later on.

May I point out another defect in this proviso? Yesterday we passed article 50 regarding the removal of the President from office upon impeachment. There we deemed it sufficient that a Resolution of the House investigating the charge preferred by the other House should be adopted for the removal of the President from Office. But here, so far as the removal of the Vice-President is concerned, we lay down that the Resolution passed by the Council of States must be agreed to by the House of the People. Yesterday I pleaded in support of Prof. Shah's amendment to the effect that the President should be removed on a resolution or vote of both Houses of Parliament and not on the vote of a single House of Parliament. As regards the removal of the Vice-President, we lay down that the resolution for removal should be adopted by both Houses of Parliament, but for the President we think it sufficient if only one House adopts a resolution for removing him from office. This is a strange anomaly which signifies that we are attaching greater importance to the removal of the Vice-President than to the removal of the President from office.

By your leave, Sir, I will just say a word about the amendment just now moved by Prof. Shah. I am afraid my Friend has not read article 79 which provides for the emoluments, the salary and allowances of the Chairman of the Council of States who is in our Constitution the Vice-President of India. Had he read that article he would not have moved that part of his amendment No. 1259 which relates to this question.

Mr. Vice-President : To the next amendment there is an amendment standing in the name of Pandit Thakur Das Bhargava. He is not moving it I understand. The main amendment is also not moved.

Does Mr. Mohd. Tahir want his amendment No. 1266 to be put to vote?

Mr. Mohd. Tahir (Bihar : Muslim) : Sir, as Mr. Kamath has moved only a part of amendment No. 1264, I hope you will permit me to move my amendment.

Mr. Vice-President : That cannot be done. We have established a convention on those lines. I now want to know whether the honourable Member wants me to put it to vote or not?

Shri H. V. Kamath : He is right, Sir. As I did not move my entire amendment which consists of four parts his amendment may be allowed to be moved. I moved only the third part of my amendment. His amendment relates to another matter and therefore it is not blocked.

Mr. Mohd. Tahir : May I move all three amendments Nos. 1266, 1267 and 1268 together?

Mr. Vice-President : You may move No. 1266 only. No. 1267 will fall under another group as will be seen from the copy of the notice regarding grouping of amendments sent to honourable members.

Mr. Mohd. Tahir : I beg to move:

"That in clause (b) of the proviso to article 56, for the words 'all the then members of the Council' the words 'the members of the Council present and voting' be substituted."

Now, Sir, if my amendment is accepted the clause will read thus:

"The Vice-President may be removed from his office for incapacity or want of confidence by a resolution of the Council of States passed by a majority of the Members of the Council present and voting".

Now, Sir, in this connection I want to submit that the existing provision says "by a resolution of the Council of States passed by a majority of all the then members of the Council". I want to make a distinction between "all the then members of the Council" and "the members of the Council present and voting". Now, the provision "all the then members of the Council" also includes those members who, although they are members of the Council, may be absent from the Council, but the intention evidently is that the resolution should be moved and passed by those members who are present and voting Sir, Dr. Ambedkar is not attending to this.

Mr. Vice-President : Dr. Ambedkar, Mr. Tahir wants your attention.

Mr. Mohd. Tahir : I was saying that the provision "by a majority of all the then members of the Council" also includes those members who, although they are members of the Council, may not be present in the Council, while the intention evidently is that the resolution should be passed by a majority of the members who are present and voting. Therefore I submit that the wording "members of the Council present and voting" will be more suitable than the existing words "all the then members of the Council". With these words, I move.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, Sir, I move :

"That in clause (b) of the proviso of article 56, for the words "all the then members of the Council and agreed to by the House of the People", the following be substituted:

'not less than two-thirds of the total membership of the Council and agreed to by the House of the People by a majority of not less than two-thirds of its total membership.' "

Sir, the Constitution provides for the election of a Vice-President who discharges the functions of the President in the absence of the President for any reason whatever, for instance, if he is absent on account of illness or other causes. He also discharges the functions of the President when the office of the President falls vacant. Therefore the office is a sufficiently important one. That he is also asked to preside over the Council of States is only an incidental thing. He is the *ex officio* Chairman of the Council of States. Therefore, Sir, this office of Vice-President has been made sufficiently important. Now, the method of election to the Office has been made simpler, even though I would have wished that it were also made as elaborate as the election of the President, but we have accepted his election to be made by the members of both Houses. The occupant of such an important Office, who discharges the very important functions of the President and is entitled to all the powers and immunities of the President as is stated in clause (3) of article 54,—should he be dispensed with by a simple majority of the Council of States and to be agreed to by the House of the People in a light manner? That is the question to be considered. I submit that I am in agreement with those members who moved an amendment that his removal also should be done in a similar manner and in the same way by which the President is removed for incapacity, for treason and other things. I support those amendments which say that he should be treated in the same footing as the President in the matter of his removal from office, but if for any reason the Chairman of the Drafting Committee is not prepared to go to that length, it is but fair that the Vice-President should be removed from office for incapacity or for want of confidence by a double majority of

two-thirds. It may be said that if the Council of States has no confidence in the Vice-President, he should be removed by a simple majority because the words that are used are "for his incapacity or for want of confidence", but we are forgetting one thing. He is not only the person who presides over the Council of States but he is also the person who discharges the very important functions of the President. I agree that when the Council of States is not in favour of his continuance as its Chairman, no doubt there is some reason for saying that he should be removed, but we are forgetting, as I said, that he will be functioning as the President also during his absence for whatever reason and during a vacancy. This is a very important function and therefore, Sir, if the Chairman of the Drafting Committee is not agreeable to his removal on the same footing as the President is to be removed, at least he should be removed from office only by a double majority of two-thirds of both the Houses. Sir, I move.

Mr. Vice-President : Amendment No. 1265 is disallowed as being verbal.

Amendment No. 1268 is disallowed for a similar reason.

Then we come to the four amendments which have been grouped together in the papers circulated to honourable members—1267, 1270—1272. Of these 1270 is the most comprehensive and may be moved. It stands in the names of Shri Nand Kishore Das and Shri Biswanath Das.

(Amendment No. 1270 was not moved.)

Then amendment No. 1267 can be moved. Mr. Mohd. Tahir.

Mr. Mohd. Tahir: Mr. Vice-President, Sir, I beg to move :

"That in clause (b) of the proviso to article 56, for the words 'fourteen days notice' the words 'fourteen days notice in writing signed by not less than thirty members of the Council of States' be substituted."

I will be very short in this matter as we have already adopted in respect of the President that such resolutions should be submitted, signed by one-fourth of the total members of the House. Now, as regards the Vice-President, I do not understand why we should not adopt this provision also that a notice like this must be signed by at least 30 members of the Council of States and then only it can be admitted. I hope Dr. Ambedkar will give due consideration to this and will agree to adopt this amendment.

(Amendments Nos. 1271 and 1272 were not moved.)

Mr. Vice-President : Amendment No. 1273 stands in the name of Mr. Naziruddin Ahmad. This is verbal and is therefore disallowed.

Amendment No. 1274 can be moved.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That in proviso (c) of article 56, after the word 'term', the words, 'or resignation or removal as the case may be' be inserted."

Proviso (c) provides that the Vice-President must continue in office notwithstanding the 'expiration of his term'. I want to make the passage read as follows: "the expiration of his term or resignation or removal as the case may be". The 'expiration of his term' usually means the usual efflux of time for which he holds the office. 'Resignation or removal' must also be included to make the passage complete. It was only to clarify this that I have suggested this amendment.

Mr. Vice-President : The article is now open for general discussion. Mr. Sidhwa and after him Mr. Tajamul Husain will speak. I give the two names together.

Shri R. K. Sidhwa (C. P. & Berar : General) : Mr. Vice-President, Sir, with regard to amendment No. 1259 moved by my honourable Friend, Prof. K. T. Shah, he states that an official residence should be provided for the Vice-President and that his emoluments and allowances should be fixed in the Constitution; and while suggesting that, he gave his reasons that if we do not fix the emoluments and if we do not give him a reasonable salary and also provide him with a house, it is likely that he would be tempted to many kinds of vices; he gave certain illustrations. Now, Sir, I shall deal with these matters.

As regards the Vice-President's post, as we all know, we have passed article 53, which states that the Vice-President shall be *ex-officio* Chairman of the Council of States, and as such his salary will certainly be fixed. The Chairman of the Council of States, who will be holding a very responsible post will certainly get a salary as is definitely stated in article 79. Article 79 states, Sir, that all the salaries of the President, Chairman of Council of States, the Speaker, the Deputy Speaker will be fixed. My honourable Friend, Prof. K. T. Shah feels that it should be laid down in the Constitution. I do not think, Sir, that in the Constitution we should lay down a salary for the post of Vice-President. The President's and the Governors' salaries have been fixed for certain reasons that we know very well, that their salaries should not be changed from time to time but it is only fair—the Vice-President is after all a subordinate to the President—his salary should be subject to the vote of the House.

Prof. K. T. Shah goes further and says that his salary should not exceed those granted to the President, as if he feels that the Vice-President is superior to the post of the President, and therefore we must fix a bigger salary than what the President is likely to get. From this point of view, it will be seen that while we all admit that the Chairman of the Council of States and the Vice-President should be given a salary—there is also provision to this effect—I do not agree with him and I hope the House will not agree with him that the salary should be laid down in the statute.

Now, Sir, coming to the residence, my honourable Friend, Prof. Shah, stated that in this rent control business, if we do not allow him a residence, it is likely that he might come in conflict and then he would be tempted to many kinds of vices. I do not accept such a proposition for this reason. Today we have a Speaker of this Constituent Assembly. He is not provided with any house and yet the Government have requisitioned a house for him. Similarly for the State Ministers, who do not get official residences and the Deputy Ministers. Still the Government have requisitioned houses for them for that purpose. I do not know what rent they are charged, but ordinarily, it is the custom that the Government officials are charged 10 per cent of their salaries. And, therefore, Sir, it is an exaggeration to say that if we do not provide an official residence, an officer will have to go to the Rent Controller [*sic*] and say: "If you give me this house, I will pay you so much." I do not think any Vice-President would ever condescend to do such a thing and it would be a sorry day if we have a Vice-President, who really would go to that length. From this point of view, Sir, I consider Prof. Shah's fears are uncalled for.

Prof. Shah laid great stress upon corruption. He said he wants to pay the Vice-President and all the officials and all our Ministers a reasonably high salary, so that they may not be tempted to any kind of corruption or bribe. If we accepted that argument and pay more salary to make a man honest, well, I think, Sir, that proposition looks to me as most absurd and ridiculous. An honest man is an honest man. An honest man, even if he draws a salary of Rs. 20, is honest. A dishonest man, if he draws a salary of Rs. 20,000, is dishonest, Sir. I know that some of the Executive Councillors in the past drawing a salary of Rs. 5,000 have been found to be corrupt. I know some of the Governors drawing a salary of Rs. 10,000 and I know that some of the

Viceroys drawing a salary of Rs. 20,000 have been known to be corrupt and many of my friends in this House and in this country know that there had been Viceroys drawing salaries of Rs. 20,000 who have been proved to be corrupt and have taken bribes and some of the Governors too. Sir, I would not like to mention their names; but I know the House will share the view with me. Therefore it is wrong to state,—it is a fallacy and I will never accept it—that you must pay a man more to make him honest. I know of men who draw Rs. 15 and Rs. 20 being honest although they could not make both ends meet in the maintenance of their families. If a man gets a smaller salary, he adjusts his household budget accordingly. If you merely want to pay a higher salary to make him honest, I will never accept that proposition. Wherever it has been tried, it has simply failed. Therefore, I am sorry I cannot accept the argument advanced by my honourable Friend Prof. K.T. Shah while moving his amendment, although in theory it looks laudable that you should give more salary to make a man honest. I have seen in my public life what has happened in the case of public servants drawing more salaries, and I know how corrupt they have been. With these words, Sir, I oppose very strongly the amendment moved by my honourable Friend Prof. K. T. Shah.

Mr. Tajamul Husain (Bihar : Muslim) : Mr. Vice-President, Sir, I will take up first the amendment moved by my honourable Friend Prof. K.T. Shah, that is, amendment No. 1259. His amendment says that there should be an official residence for the Vice-President of the Indian Republic, that there should be fixed by Parliament emoluments and allowances to the Vice-President, and till that is fixed, his pay should be Rs. 4,500 and that his pay should not be diminished during his term of office, and also that he should get a pension after retirement to maintain the dignity of the high office which he had held during the term of his office of five years. I have come to support this amendment. The Speaker just before me, my honourable Friend Mr. Sidhwa, said, what is the use of mentioning the salary of the Deputy President when it is mentioned in article 79 of the Constitution? I at once looked up article 79 and found that the salary of the Deputy President is not mentioned at all. The salary of the Chairman, the Deputy Chairman, Speaker and Deputy Speaker of the Upper Chamber and the Lower Chamber, the Council of States and the House of the People has been mentioned. Sir, these are two distinct things. He is the Vice-President as well as the Chairman of the Council of States. He is elected as Vice-President and by virtue of his office, *ex-officio* he becomes the Chairman of the Council of States. Now, Sir, what do we find in England? We have got the Lord Chancellor who is the Chairman of the House of Lords. At the same time, the Lord Chancellor holds office as the supreme head of the judiciary. He is supposed to be higher than the Lord Chief Justice of England. He gets a salary as the Chairman of the House of Lords £4,000 and as the highest Judge in the land, he gets a salary of £6,000, total, £10,000. When he retires from office, he gets a pension of £4,000. Now, Sir, in order to maintain the dignity of such a high office, these things should be allowed to him and what should be the salary of the Vice-President of the Indian Republic should be mentioned in the Constitution. That is the reason why I have come to support this amendment.

I take up next the amendment moved by my honourable Friend Prof. K.T. Shah. I again support this amendment. That amendment says as follows. I will just read from the article 56 with which we are dealing, only a few words: "(b) A Vice-President may be removed from his office for incapacity or want of confidence," and for no other reason, the amendment moved by my honourable Friend Prof. K.T. Shah mentions that apart from these two things, there must be something else and this is how he has worded his amendment. The clause as amended would read this way. "A Vice-President may be removed from his office for reason duly proved or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification

[Mr. Tajamul Husain]

for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption duly proved." I think, Sir, no argument is needed for this simple matter. All these things are very important and they should be inserted in this Constitution in article 56 (b). Therefore, I support this amendment of Prof. K.T. Shah.

I next take up the amendment moved by my honourable Friend Mr. Kamath. I regret, Sir, I have to oppose it. I want your ruling, Sir, on this point. Here we find that my honourable friend Mr. Kamath has sent in five distinct and separate amendments in one amendment.

Shri H.V. Kamath : I am sorry that my honourable Friend Mr. Tajamul Husain did not follow what I said before I moved the amendment. I said that I had sent them as four separate amendments, but unfortunately they have appeared as one in the book of amendments, for no fault of mine. I moved only one of the four.

Mr. Vice-President : Mr. Kamath moved the third part of his amendment only. He did not move the other parts.

Mr. Tajamul Husain : Unfortunately, when Mr. Kamath was moving his amendment, I was not in the House. So I did not know what he actually moved. I want to know whether he moved only one amendment or all the amendments.

Mr. Vice-President : Only the third part.

Mr. Tajamul Husain : Only one amendment? Then, I have nothing to say against it. If he had moved all the amendments, I would have asked for your ruling. It may be the mistake of the office. I have nothing to do with that. Each amendment must be moved distinctly and separately.

Now, coming to amendment No. 1269 moved by my honourable Friend Mr. Mahboob Ali Baig, I oppose this amendment. He says that in clause (b) of the proviso of article 56 for the words "all the then members of the Council and agreed to by the House of the People", the following be substituted: "not less than two-thirds of the total membership of the Council" etc. He wants that when a censure motion is being brought against the Vice-President, there must be a majority of two-thirds. Yesterday, Sir, as regards the censure motion against the President, I said that the President must not be a mere tool in the hands of the majority party and there must be a two-thirds majority. Today I am saying that a bare majority is quite sufficient. My reason is different from what I said yesterday. My reason here is that he is only acting as the Speaker of the House. He is the Chairman of the Council of States and everywhere in the civilized world you will find and also in India you will find in the Parliament here and in all the Provincial Legislatures, the Speaker can be removed by a simple vote of majority. Therefore he must have the confidence of the majority of the people. Therefore I oppose. Otherwise he will become too autocratic. He must protect the whole House proved by a majority of a single vote. Therefore I oppose.

The next is No. 1274 by Mr. Naziruddin Ahmad who wants to add the words "or resignation or removal as the case may be in proviso (c) of article 56. The clause will then read—

"The Vice-President shall, notwithstanding the expiration of his term or resignation or removal as the case may be, continued to hold office until his successor enters upon his office."

I strongly oppose this. This clause (c) simply means that when his term has expired and another election is being held and his successor has not been found, he must continue in office till his successor is duly found and duly

installed in his place but when the Deputy President or the Chairman of the Council of States has been removed, removed for certain reasons like bribery etc., we do not want him to continue even for one minute. I would not like to sit in a house where the Presiding Officer has been found guilty of bribery. He must go at once. As regards resignation, he resigns as he becomes incapable or has been compelled to do so and we do not want him even then. I quite agree that when his term expires after five years, then he must remain till his successor is found but if he has been removed, he must get out at once. I therefore oppose strongly the amendment of Mr. Naziruddin Ahmad.

Pandit Thakur Dass Bhargava : Sir, the Vice-President as such will have two capacities—No. 1, while he is acting as President and No. 2, while acting as the President of the Council of States. Now in regard to his capacity as President, it is clear that if he violates the Constitution he would come under the purview of article 50 and will be impeachable and removable from his office as President. So far as the question of his removal is concerned in regard to article 56 as President of the Council of States, the provisions are exactly the same as are applicable to the Speaker of the House of People. Perusal of article 77 (c) would show that the language is almost the same for the Speaker of the House of People as for the Vice-President who will fill the office of President of the Council of States and I do not think that any change is necessary at all. My apology for taking the time of the House only consists in my anxiety to emphasise one point which struck me and that was that the Vice-President should lose his office as such *ipso facto* if he is successfully impeached under article 50. In regard to this I have been assured that the position is clear and it will be done in some other manner except by providing under article 56. I tabled an amendment which I have not moved because I have been assured that the rules will provide for it. When I speak on this point, it is only to bring it to the notice of the authorities that some provision should be made so that by virtue of successful impeachment under article 50 the Vice-President may be removed without any want of confidence being shown by a Resolution as provided under Clause (b). The mere fact that he has been successfully impeached is in my opinion, quite sufficient for his removal from the position of Vice-President and therefore this should be made clear. I only wanted to bring out this point and, get an assurance that the rules will provide for it.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I regret my inability to accept any of the amendments that have been moved to article 50. I should, however, like to meet some of the points that have been made by those who have moved the amendments. Sir, the first amendment was by Prof. Shah which laid down that provision should be made for pay and pension for the Vice-President. This is a matter which Prof. Shah has also raised in connection with the office of the President and I had stated my objection to making any such provision in the Constitution itself.

The Honourable Shri K. Santhanam (Madras : General): May I point out that in Second Schedule express provision has been made?

The Honourable Dr. B. R. Ambedkar : Having explained my position with regard to that point, I shall not repeat what I have said then. Coming to sub-clause (b) of article 56, various points have been raised. First of all a point has been raised that the words 'bribery, corruption etc.' should be added. Personally I do not think that any such particular phrase is necessary. Want of confidence is a very large phrase and is big enough to include any ground such as corruption, bribery etc. Therefore that amendment, in my judgment, is not necessary. The second point that has been made is that the removal of the Vice-President should be governed by the same rules as the removal of the President *viz.,* that there should be a majority of two-thirds. Now, Sir, with regard to that point, I would like to draw the attention of the House that although the Constitution

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speaks of Vice-President, he really is a Chairman of the Council of States. In other words, so far as his functions are concerned, he is merely an opposite number of the Speaker of the House of People. Consequently in making a comparison or comment upon the provisions contained in sub-clause (b) of article 56 those provisions should be compared with the articles dealing with the removal of the Speaker and they are contained in article 77 (c). If this article 56 (b) is compared with the article 77 (c), members will find that the position is exactly identical. The same rules which are made applicable to the removal of the Speaker are also made applicable to the removal of the Vice-President who, as I have stated, is really another name for the Chairman of the Council of States. Consequently, the requirement of two-thirds majority is unnecessary.

And then my friend Mr. Kamath has raised what I might call a somewhat ticklish question. He said that sub-clause (b) of this article speaks of a majority, while when the reference is made to the House of the People, no such phraseology is used. Now, the matter is quite simple. Whenever we have said that a certain resolution has to be passed, it is understood that it has to be passed by a majority of the House. It is only when a special majority is mentioned that a reference is made to a majority and not otherwise. Now, I quite agree that his argument is that although we do not mention or specify any particular majority with respect to the Council of States, we have still used the phraseology—passed by a majority. Why is this distinction made? Why is this distinction between the phraseology used in regard to the Council of States and in regard to the House of the People? Now, the difference has been made because of the word "then" occurring there. That word "then" is important. The word "then" means all members whose seats are not vacant. It does not mean members sitting or present and voting. It is because of this provision, that all members who are members of Parliament and whose seats are not vacant, that their votes also have to be counted, that we have said—passed by a majority of the then members.

Shri H. V. Kamath : Does it mean the total number of members of the Council of States?

The Honourable Dr. B. R. Ambedkar : Yes, the word 'then' is necessary.

Shri H. V. Kamath : On a point of clarification, Sir. Yesterday in article 50, we used the phraseology 'passed by a majority' in place of the two-thirds majority. Should we not do the same thing here, to make the meaning clearer?

The Honourable Dr. B. R. Ambedkar : I shall explain it presently. The reason is due to the fact that we have to use the word 'then' which is intended to distinguish the case of members present and voting, and members who are members of the House whose seats are not vacant, and voting.

Shri H. V. Kamath : Am I to understand that unless otherwise specified, when you say a resolution is passed or adopted, it means that it is by a simple majority?

The Honourable Dr. B. R. Ambedkar : Yes.

Now, coming to the point raised by my friend Mr. Tahir, amendment No. 1266. If I understood him correctly, what he says is that the resolution of no-confidence should require to be passed by two-thirds. This may be good or it may be bad. I cannot say. All I can say is that this provision is also on a par with the provision regarding the want of confidence in the Speaker. There also we do not require that it should be passed by two-thirds majority or two-thirds of the members of the House.

Then, coming to the amendment of my friend Mr. Naziruddin Ahmad, who wants that in clause (c) after the word "term" words such as resignation etc.

should be inserted. This amendment is absolutely unnecessary, because this article does not make any provision for filling casual vacancies. There is no necessity for making any provision for casual vacancies because under article 75, sub-clause (1) there is always the Deputy Chairman who is there to step in whenever there is any casual vacancy. Consequently such an amendment is unnecessary.

Sir, I hope that with this explanation, the House will accept the article as it stands.

Mr. Vice-President : I may now put the amendments, one by one to vote. The question is:

"That article 56 be numbered as clause (1) of the article and the following new clauses be added after that:

'(2) The Vice-President shall have an official residence and there shall be paid to the Vice-President such emoluments and allowances, not exceeding those granted to the President, as may be determined by Parliament by law, and until provision in that behalf is made by Act of Parliament, the Vice-President shall be paid a monthly salary of Rs. 4,500.

(3) The emoluments and allowances of the Vice-President shall not be diminished during his term of office.

(4) Every Vice-President, on completion of his term of office and retirement shall be given such pension or allowance during the rest of his life as Parliament may by law determine, provided that, during the life time of any such Vice-President, in retirement and pensioned, such pension or allowance shall not be diminished.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in paragraph (b) of proviso to article 56, after the words "be removed from his office for" the following be added:

'reason duly proved, or for any violation of the Constitution duly established, or for conviction for any offence constituting a disqualification for election to the office of a President, Vice-President or member of Parliament, or for physical or mental incapacity duly certified, or for bribery and corruption, duly proved.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (b) of the proviso to article 56, for the words "agreed to by the House of the People" the words "agreed to by a similar resolution of the House of the People" be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (b) of the proviso to article 56, for the words 'all the then members of the Council' the words 'the members of the Council present and voting' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in clause (b) of the proviso of article 56, for the words 'all the then members of the Council and agreed to by the House of the People', the following be substituted:

'not less than two-thirds of the total membership of the Council and agreed to by the House of the People by a majority of not less than two-thirds of its total membership.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (b) of the proviso to article 56, for the words 'fourteen days' notice' the words 'fourteen days' notice in writing signed by not less than thirty members of the Council of States' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in proviso (c) of article 56, after the word 'term', the words, 'or resignation on removal as the case may be' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 56 stand part of the Constitution."

The motion was adopted.

Article 56 was added to the Constitution.

Article 57

Mr. Vice-President : Now we come to article 57.

The motion before the House is that article 57 form part of the Constitution.

There are only two amendments tabled so far, Nos. 1275 and 1276. No. 1275 standing in the name of Mr. Naziruddin Ahmad is disallowed as it has the effect of a negative vote.

No. 1276 standing in the name of Prof. K. T. Shah may be moved.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move that in article 57 after the words "the functions of the President" the words "or Vice-President" be added.

The article as amended would then read as follows:—

"Parliament may make such provision as it thinks fit for the discharge of the functions of the President or Vice-President in any contingency not provided for in this Chapter."

Sir, I am at a loss to understand why while providing for "*any contingency*" the words Vice-President should have been omitted, in laying down provision for the discharge of the functions entrusted to the President. Such a contingency might quite possibly occur when the President, for one reason or other,—let us say, for having lost confidence of the House, or having been impeached successfully,—is unable to discharge his functions; and the Vice-President has gone insane. That is a contingency which is not utterly out of possibility; and as such I do not really see why this simple contingency has not been foreseen by the draftsmen. The draftsman has been quick enough in many cases, to propose amendments of his own to his own Draft, and to see to it that others support him also, when he finds that certain matters have been omitted in the first Draft, they subsequently occur to him in the amendments proposed by others, and, taking the hint from them, he tables his amendments, which, of course have the unanimous support of the House except one. But here I find a case in which I do not think the draftsman will be well advised to say that this amendment is unnecessary.

I have just now mentioned a particular contingency and said that when both these high officers may not be able to, or may not be permitted, under the Constitution, to perform or discharge their functions, in that contingency it is but necessary that some such provision be made.

As this is an article of the Constitution, I take it that the ordinary legislature would not be allowed to step in, and rectify the omission by making provision, should that contingency occur. You may say that there will be the Parliament, and Parliament will make the necessary provision for such a contingency. But if a provision is made expressly by the Constitution—and the Constitution has presumably deliberately left out the addition of the word "Vice-President"—then I put it to the House that it is an omission which, at this stage, we ought to

correct. I therefore, without further argument, suggest that this amendment at least ought to be accepted. It is utterly unoffensive, it does not reflect anything on the skill, ingenuity or foresight of the Draftsman, and as such I trust the Draftsman will agree to accept it.

Mr. Tajamul Husain : Mr. Vice-President, I wish to oppose the amendment just moved by my friend Prof. K. T. Shah. My reasons are two. No. 1 is this Article 57 says that "Parliament may make such provision as it thinks fit for the discharge of the functions of the President in any contingency not provided for in this Chapter". Now, my friend Prof. Shah wants the addition of the words "or Vice-President". Now, Parliament will have power, if his amendment is accepted, to make provision either for the President or for the Vice-President; it cannot make for both. Supposing it makes provision only for the Vice-President and not the President, then what happens? The word "or" is therefore absolutely wrong. Parliament may very well say, "we make provision for the Vice-President and no provision for the President to discharge his functions at all."

The second objection is, supposing the word "or" is removed and "and" had been there, or Prof. Shah had meant "and", then I beg to submit that the Vice-President has no functions to perform at all as Vice-President; so, what provision for the discharge of his functions can anybody make or the Parliament make? He functions only as the Chairman of the Council of States. We are not dealing with him here as Chairman of the Council of States. So I oppose the amendment, because he has no functions or duty to perform.

The Honourable Dr. B. R. Ambedkar: I am afraid Prof. K.T. Shah has not considered the matter as fully as he ought to have before moving his amendment. The omission of the Vice-President from article 57 is a very deliberate one, because as my friend Mr. Tajamul Husain has just now pointed out, his main functions, which are those of the Chairman of the Council of States, have been amply provided for by article 75 (1) where there is a Deputy Chairman who will function in his absence. It is therefore unnecessary to introduce any such amendment in article 57.

My friend Prof. Shah said that I was really borrowing very liberally from the amendments of other friends whenever I found that the Draft was in some way defective. I think Prof. K. T. Shah, if I may say so, has indirectly paid me a compliment because, as Emerson has said, "A genius is the most indebted man" and I am certainly most indebted to my friends.

Mr. Vice-President : I am now putting the amendments to vote.

The question is:

"That in article 57, after the words 'the functions of President' the words 'or Vice-President' be added."

The amendment was negatived.

Mr. Vice-President : There are no other amendments.

The question is:

"That in article 57, stand part of the Constitution."

The motion was adopted.

Article 57 was added to the Constitution.

Article 58

Mr. Vice-President : We now pass on to the next article No. 58.

The motion is:

"That article 58 form part of the Constitution."

[Mr. Vice-President]

We have a number of amendments, of which only No. 1281 will be allowed. The other amendments are verbal and are therefore disallowed.

(Amendment No. 1281 was not moved.)

Mr. Vice-President : I shall put this article to vote.

The question is:

"That article 58 stand part of the Constitution."

The motion was adopted.

Article 58 was added to the Constitution.

Article 59

Mr. Vice-President : The motion is:

"That article 59 stand part of the Constitution."

We have a number of amendments. No. 1282 is disallowed as it has the effect of a negative vote. 1282-A may be moved.

(1282-A was not moved.)

Amendments Nos. 1283 and 1284. There are a number of amendments to them also, but they are disallowed as being verbal. No. 1285 may be moved.

(Amendment No. 1285 was not moved.)

Amendment No. 1286.

Mr. Tajamul Husain : Mr. Vice-President, Sir, I beg to move:

"That clause (3) of article 59 be deleted."

Sir, in my opinion, the President only should have power to suspend, remit or commute a sentence of death. He is the supreme Head of the State. It follows therefore that he should have the supreme powers also. I am of opinion that rulers of States or Provincial Government should not be vested with this supreme power. The President of the Federation should be the supreme authority in respect of offences committed against Federal Subjects. I say that there must not be divided loyalty on this subject. When the States came into the Federation they accepted the operation of the Federal Laws in their States and they accepted to that extent that the Federal Government was supreme and the President of the Federation as representing the Federal Government can alone be the authority who can grant pardons. In the U.S.A. the President grants pardon in all the States. These are matters of the most vital importance to the existence of the Centre and therefore the power of pardon could not be given to anybody except the Head of the Federal Government, that is the President or the Indian Union or the Indian Republic. If the ruler of a State exercised powers of pardon in respect of offences relating to those subjects which they themselves had conceded to the Federation it would amount to taking away with one hand what they had given with the other. In regard to the subjects conceded by the State to the Union the State ceases to be sovereign to that extent. The Federal Law is binding upon every citizen and there is a direct relation between the citizen and the Federal Government. When there is a breach of the federal law the representative of the Federation must have the inherent power of pardon. Therefore I think where the question of pardon is involved the more serious the offence the higher should be the authority to grant the pardon. I have already pointed out about America. In England too the pardon is granted only by the King on the advice of his Home Minister, but pardon is granted only by the representative of the State. In those days when there was no

talk of partition of this country they were thinking of a weak Centre with three or four subjects like Communications, Defence, Foreign Affairs, etc., and the provinces were to enjoy complete autonomy. Now that the country has been partitioned we people who are the citizens of this country have decided once for all that the Centre will not be weak but a strong one, that we would have the strongest possible Centre. If this is our aim the head of the Central Government must have this power. With these words, Sir, I move my amendment and I hope it will have the support of the whole House, including my honourable Friend Dr. Ambedkar and also you, Sir.

Mr. Vice-President : Amendment No. 1287 is disallowed as being formal.

(Amendment No. 1288 was not moved.)

Shri R. K. Sidhwa : Sir, my honourable Friend Mr. Tajamul Husain has proposed to delete clause (3) of article 59 and his argument was that he wanted to keep the authority of the President supreme. Nobody denies that. If the honourable Member would see article 59 (1) it says:

"The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence....."

Similarly powers are vested in the Governors and they can also suspend, remit or commute a sentence of death. In my opinion it is very healthy they should continue to vest this power which existed under the old regime in the Governors of the provinces, for this reason that the Governor of a province is better informed of a particular case of pardon which is referred to him. As far as the President is concerned when the question goes to him, he has to refer the matter first to the Governor and if the Governor has not exercised his right properly the President goes into the whole matter and exercises his right. In the matter of commuting a sentence of death it is only fair that the powers should also be with the Governor and the supreme power should remain with the President. The Governor is a popular governor and is responsible in a sense to the legislature, as he is the nominee of the Premier or the Prime Minister. If he acts wrongly, as my friend fears, then the legislature is there to keep a vigilant watch over him. Therefore I do feel that the present position which is retained in the Draft Constitution is very desirable and we should retain those powers.

As far as rulers are concerned I am not very clear. But I do feel that in the constitution that will be framed by the various constituent assemblies of the States they will see that the ruler is made responsible to the legislature and he will also be like the head of provinces a mere figurehead of the State. From that point of view I would support even the power being vested in the ruler, although I make a qualification to my statement that at present I do not know what the position of the ruler is. If the ruler is autocratic and not responsible to the legislature certainly I would not like to give him that power. But assuming as I do that the rulers of the States are going to be made responsible to the legislatures I support the article as moved by Dr. Ambedkar. The commuting of a sentence of death is a very important power and we do not want straightaway that the matter should go to the President. Let the Governor, who knows his province very well and can consult his Premier, exercise the function. The President is for the whole of India. Even if the matter goes to him he has to consult first the Governor and the Governor has to consult his Premier. From that point of view I oppose the amendment of Mr. Tajamul Husain.

Mr. Vice-President : Does Dr. Ambedkar wish to say anything on this amendment moved by Mr. Tajamul Husain?

The Honourable Dr. B. R. Ambedkar : Yes: Sir: It might be desirable that I explain in a few words in its general outline the scheme embodied in article 59. It is this: the power of commutation of sentence for offences enacted by

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the Federal Law is vested in the President of the Union. The power to commute sentences for offences enacted by the State Legislatures is vested in the Governors of the State. In the case of sentences of death, whether it is inflicted under any law passed by Parliament or by the law of the States, the power is vested in both, the President as well as the State concerned. This is the scheme.

With regard to the amendment of my friend Mr. Tajamul Husain, his object is that the power to commute sentences of death permitted to the Governor should be taken away. Now, sub-clause (3) embodies in it the present practice which is in operation under which the power of commuting the death sentences is vested both in the Governor as well as in the President. The Drafting Committee has not seen any very strong arguments for taking away the power from the Governor. After all, the offence is committed in that particular locality. The Home Minister who would be advising the Governor on a mercy petition from an offender sentenced to death would be in a better position to advise the Governor having regard to his intimate knowledge of the circumstances of the case and the situation prevailing in that area. It was therefore felt desirable that no harm will be done if the power which the Governor now enjoys is left with him. There is, however, a safeguard provided. Supposing in the case of a sentence of death the mercy petition is rejected, it is always open, under the provisions of this article, for the offender to approach the President with another mercy petition and try his luck there. I do not think there is any great violation of any fundamental principle involved or any inconvenience that is likely to arise if the provisions in the draft article are retained as they are.

Mr. Vice-President : Now I will put the amendment of Mr. Tajamul Husain to vote. The question is:

"That clause (3) of article 59 be deleted."

The amendment was negatived.

Mr. Vice-President : I shall now put article 59 to vote. The question is:

"That article 59 stand part of the Constitution."

The motion was adopted.

Article 59 was added to the Constitution.

Article 60

Mr. Vice-President : The House will now take up for consideration article 60 of the Draft Constitution. Mr. Ahmad Ibrahim may move amendment No. 1289.

K. T. M. Ahmad Ibrahim Sahib Bahadur (Madras: Muslim) : I have given notice of an amendment to this amendment.

Mr. Vice-President : Yes, I received it just now. The honourable Member may move it.

K. T. M. Ahmad Ibrahim Sahib Bahadur : Sir, I move:

"That the proviso to clause (1) of article 60 be deleted."

The object of my amendment is to preserve the executive powers of the States or Provinces at least in so far as the subjects which are included in the Concurrent List. It has been pointed out during the general discussion that the scheme of the Draft Constitution is to whittle down the powers of the States considerably and, though the plan is said to be a federal one, in actual fact it

is a unitary form of Government that is sought to be imposed on the country by the Draft Constitution. Members from all parties, irrespective of party affiliations, have condemned during the general discussion this aspect of the Draft Constitution. They have repeatedly show that this Draft Constitution is in spirit a unitary form of Government and not a federal one.

Now, Sir, even in the Lists of Subjects drawn up and attached to the Constitution, a very large number of subjects which are usually in the Provincial List have been transferred to the Concurrent List and the Union List, with the result that we find only a small number of subjects included in the Provincial List. Article 60 (1) (a) seeks to take away from the States the executive power even with regard to those few subjects which are included in the Concurrent List. This, Sir, will be depriving the States of a large portion of even the little executive power that will otherwise be left to them under this Draft Constitution. It may be said that this has to be done for the sake of common interest, for uniformity, for defence and or emergencies. But I would point out that there is no necessity at all to take away even this limited power from the .....

The Honourable Shri K. Santhanam : May I point out to the honourable Member that the deletion of the proviso to clause (1) will vest the entire executive power and Concurrent subjects at the Centre.

K. T. M. Ahmad Ibrahim Sahib Bahadur : I am coming to that.

The Honourable Shri K. Santhanam : May I point out to the honourable this proviso will be as stated by me.

K. T. M. Ahmad Ibrahim Sahib Bahadur : I am coming to that. I have given notice of another amendment to obviate that difficulty. It is to the effect that the word 'exclusive' be inserted in article 60 (1) (a) between the words 'Parliament has' and the word 'power'. The result of this will be that the executive power of the Union will be confined only to those subjects with respect to which it has exclusive power to make laws. I think this would remove the doubt expressed by my honourable Friend. The executive power under my amendment.....

The Honourable Shri K. Santhanam : Has the honourable Member the permission of the Chair to move this amendment?

K. T. M. Ahmad Ibrahim Sahib Bahadur : The Vice-President has been kind enough to permit me to move this amendment and in pursuance of that permission. I have moved the amendment.

Shri L. Krishnaswami Bharathi : How does it read now?

K. T. M. Ahmad Ibrahim Sahib Bahadur : It reads as follows:—

"Clause (1) (a) to the matters with respect to which Parliament has exclusive power to make laws."

Therefore the executive power of the Union shall not extend to matters with respect to which it has no exclusive power to make laws, *i.e.,* matters included in the Concurrent List. Sir, under the present Government of India Act we do not have any such provision. In page 6 of the letter of the Chairman of the Drafting Committee to the Honourable President of the Constituent Assembly, in paragraph 7, he points out—

"Under the present Constitution, executive authority in respect of a Concurrent List subject vests in the province subject in certain matters to the power of the Centre to give directions."

He says then—

"In the Draft Constitution the Committee has departed slightly from this plan."

"I must point out, Sir, that it has not departed slightly from this plan but on the other hand the Drafting Committee has opened the floodgates to the Central

[K. T. M. Ahmad Ibrahim Sahib Bahadur]

Government to enable it to make as many inroads as possible into the powers of the provinces and states with respect to the Concurrent subjects, as the proviso reads:

"Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament....."

Therefore not only has the Union Government executive power in respect of subjects included in the Concurrent List to the extent it is specifically conferred by this Constitution but Parliament may also from time to time make legislation conferring on the Union Government executive power in regard to subjects included in the Concurrent list, with the result that all the subjects may be removed from the Concurrent List and transferred to the Federal List in course of time. It is not fair, Sir, that provincial autonomy should be whittled down to such an extent. In actual practice it will come to that. I know, Sir, that to obviate this difficulty, my honourable Friend, Pandit Kunzru, has given notice of an amendment for the omission of the words "or in any law made by Parliament". It will in away remove the difficulty but not the entire difficulty. That is why I am persisting in moving my amendment. Sir, under the present Government of India Act, even though the Central Government can give only directions to the provincial governments in regard to these subjects, in actual practice the provincial governments are not able to carry on their administration without any hindrance or impediment from the Central Government on account of this power to give directions. We have heard very often repeated by our Ministers that even though they do not see eye to eye with certain directions issued by the Central Government, they are helpless and cannot do what they consider best. Even with regard to the food policy they say they are able to do what they consider to be best in the interests of the province, as they have to obey the directions of the Central Government in this matter. Very often after their return to Madras from Delhi, our ministers point out that though they do not agree with the views of the Central Government, they have to carry out their directions because these directions have been issued under the law, even though they do not believe that the policy adumbrated by the Central Government in regard to the matter will be successful.

I hope, Sir, that the House will recognise the importance of this amendment. As I pointed out, already the powers of the provincial governments have been considerably taken away and if this clause also remains as it is, provincial autonomy will become almost a nullity. Even under the present provisions, powering Parliament to legislate for conferring executive power on the Union will be only glorified district boards and municipalities, and this clause empowering Parliament to legislate for conferring executive power on the Union Government with regard to any subjects included in the Concurrent list will be only another nail in the coffin of provincial autonomy.

Mr. Vice-President : Amendments Nos. 44 and 45 may be moved together.

Pandit Hirday Nath Kunzru (United Provinces: General) : Mr. Vice-President, I beg to move:

"That with reference to amendment No. 1289, in the proviso to clause (1) of article 60, the words 'or in any law made by Parliament' be deleted."

and

"that with reference to amendment No. 1289, after clause (1) of article 60 the following clause be inserted :

(1a) Any power of Parliament to make laws for a State with respect to any matter specified in entries 25 to 37 of the Concurrent List shall include power to make laws as respects a State conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter, notwithstanding that it is one with respect to which the Legislature of the State also has power to make laws."

Sir, there are federations of all kinds. There are federations for instance of the United States of America, Canada and Australia, but in none of these federal Constitutions does the Central Government enjoy the right to issue executive directions to the provincial or State governments. In Canada, concurrent powers of legislation have been given both to the Dominion Government and the provincial governments in regard to two subjects, agriculture and immigration. In Australia, there are a large number of subjects in respect of which both the Commonwealth and the States can legislate. Yet in neither of these countries is the Central Government in a position to direct the State nor provincial government to exercise their authority in any particular way. Our Constitution, however, departs, from this principle. Under the Government of India Act, 1935, the Central Government have the right to issue instructions to provincial governments in respect of certain matters. Those matters are connected either with subjects that are exclusively within the jurisdiction of the Central Legislature or are contained in Part II of the Concurrent List. If the language of the proviso to article 60 is accepted, the Central Government will have the right to issue instructions to the Provincial Governments with regard to the manner in which they should exercise their executive authority in respect of all subjects in the Concurrent List. What we have to consider is whether circumstances have arisen that make it necessary or desirable that such a power should be conferred on the Central Government.

The Honourable Shri K. Santhanam : May I point out to the honourable Member that it is only when Parliament makes a law and gives that power that it will extend in any State?

Pandit Hirday Nath Kunzru : I perfectly understand it. That is obvious. If Mr. Santhanam will bear with me for a while, he will find that I shall not omit to refer to this matter.

I do not see, Sir, that there is any reason why so large a power should be conferred on the Central Government. We have to be clear in our minds with regard to the character of the Constitution. While we may profit by the experience of other federal countries and need not slavishly copy their constitutions, it is necessary that the federal principle should be respected in its essential features. We should not go so far in our desire to give comprehensive powers to the Central Government to deal with emergencies as to make the Provincial Governments virtually subordinate to the Central Government. Whatever powers may be conferred on the Central Government if the federal principle is to be given effect to, the Provincial Governments should be coordinate with and not subordinate to the Central Government in the provincial sphere. If this principle is accepted by the House, I think that the proviso in the article under discussion would be found to be contrary to the relations that ought properly to subsist between the Central and the Provincial Governments. The proviso, as honourable Members know, runs as follows:

> "Provided that the executive power referred to in sub-clause (a) of this clause shall not, save as expressly provided in this Constitution or in any law made by Parliament, extend in any State to matters with respect to which the Legislature of the State has also power to make laws."

If this is accepted, it will be open to the Central Legislature to pass a law empowering the Central Government to issue directions to the Provincial Governments with regard to the manner in which the law should be executed. Under the Government of India Act, 1935, such a power was conferred on the Central Government, but it was more restricted. Sub-section (2) of section 126 of the Government of India Act, 1935 lays down that the executive authority of the Dominion shall also extend to the giving of directions to a Province as to the carrying into execution therein of any Act of the Dominion Legislature which relates to a matter specified in Part II of the Concurrent Legislative List and authorises the giving of such directions," and no bill or

[Pandit Hirday Nath Kunzru]

amendment dealing with this matter be introduced without the previous sanction of the Governor-General. In the new order, it is quite obvious that the Governor-General, who will be the Constitutional Head of the State, cannot be entrusted with the power given to the Governor-General by this sub-section. But there seems to me to be no reason why the power conferred by sub-section (2) of section 126 of the Government of India Act, 1935 should be widened in the manner proposed in the proviso to article 60 of the Draft Constitution. It is true that the Central Government will not have the right to issue instructions to the Provincial Governments with regard to the execution of any law, unless the law itself provides that such instructions should be issued. But this is certainly no check on the power of the Central Legislature. The Central Legislature itself will be the judge of the propriety of conferring such a power on a Government that is responsible to it. What I am seeking to do by my amendment is to protect the Provincial Governments against any unnecessary encroachment on their powers by the Central legislature and Central Government.

Now, Sir, it may be pointed out to me that if the words "or in any law-made by Parliament" are deleted from the proviso, the Central Government will not enjoy even the limited power conferred on it by sub-section (2) of Section 126 of the Government of India Act, 1935. I think, Sir, that this can be provided for under article 234. I have accordingly given notice of an amendment to article 234 that would enable the Central Government to issue instructions to provincial Governments with regard to the execution of laws relating to items 25 to 37 of the Concurrent List if the central legislature by law authorises the Central Government to do so.

There is, however, one other matter to which it is necessary to draw the attention of the House. The second part of my amendment goes beyond anything contained in the Government of India Act, 1935. I may be asked how I am proposing an extension of the power of the central legislature and through it of the Central Government when the purpose of my amendment is to see that the executive authority of the provincial Governments is not unnecessarily restricted by orders issued to them by the Central Government under laws passed by Parliament. Honourable Members will remember that a few weeks ago, the Deputy Prime Minister introduced a Bill in this House the object of which was to amend the Government of India Act, 1935. It was stated in the Statement of Objects and Reasons attached to that Bill that experience had shown that uniform principles in the review of awards made by the Central and provincial industrial tribunals should be adopted under the overall control of the Central Government. It was therefore proposed in the Bill that the Central Government should, in addition to the right of issuing instructions to the provincial Governments in regard to the manner in which their authority should be exercised, also have the power to confer power on their own officers regarding the execution of laws dealing with any of the matters referred to in the Concurrent List. I should not like to go into the merits of that Bill; but we have to take into account the fact that in the present circumstances it is necessary so to widen the powers of the Central Government as to enable them to impose duties on their own officers in respect of certain matters if any law made by Parliament permits them to do so. The matters with which the Bill introduced by the Honourable Sardar Vallabhbhai Patel is concerned are industrial matters and a few other matters. Broadly speaking, these matters are covered by items 25 to 37 of the Concurrent List contained in the Draft Constitution. These matters are, but for two items, the same as those contained in Part II of the Concurrent List in the Government of India Act, 1935. It appears to be reasonable in the present circumstances when Labour is becoming conscious of its rights, when questions relating to it have to be settled on an all-India basis, that in all these questions that might involve the settlement of disputes between labour and the

employers, there ought to be a power vested somewhere, in order that matters of importance may be dealt with in an uniform manner. I do not know when the Bill introduced by the Honourable Sardar Patel will be considered by the House. But, I have little doubt that the power asked for by him will be conferred on the Central Government by the House. If that is done, it is obvious that the Draft Constitution will have to be amended so that it may be brought into line with the Government of India Act, 1935. I have anticipated this necessity and have therefore brought forward an amendment authorising the Dominion Parliament to confer powers or impose duties on the Central Government or any of its officers in respect of entries 25 to 37 of the Concurrent List. It seems to me, Sir, that the amendment proposed by me meets the needs of the case. There is no reason whatsoever why the Central Government should be given the wide power that the passage of the proviso would confer on the Central Executive under laws passed by the Central Parliament.

I should like, Sir, to refer to one more matter before I resume my seat. Under the Government of India Act, 1935, the power of the Dominion legislature to pass laws authorising the Central Government to confer powers and impose duties on their own officers with respect to matters in regard to which provincial legislatures could make laws could be exercised only when a declaration of emergency had been issued declaring that the security of India was threatened by war. So far as I remember, Sir, in no other contingency was the Central Legislature allowed to authorise the Central Government, or to place the Central Officers in a position to deal with the execution of laws on matters included in the Concurrent List. In proposing therefore my second amendment, it will be seen that I have not copied the provisions of the Government of India Act, 1935. I have departed considerably from the provisions of that Act but I have done so in so far only as circumstances have proved that the departure is necessary. It is incumbent on my honourable Friend Dr. Ambedkar to show that the wide power that he has asked for is essential in the present circumstances if law and order are to be maintained in India or if its security is not to be threatened or if problems arising in the new circumstances are of such a character that the country will be able to deal with them only when the Provincial Governments have been made practically subordinate to the Central Government. As I do not feel that any such circumstances have arisen, I have proposed the amendments that I read out a little while ago. I hope, Sir, that they will receive the careful consideration of the House.

(Amendments Nos. 1290 and 1291 were not moved.)

Mr. Vice-President : Amendment No. 1292 is disallowed as a verbal amendment.

Mr. Naziruddin Ahmad: It is not merely verbal. It will change the sense. In fact, my amendment will set up a different authority altogether.

Mr. Vice-President : I am afraid I do not agree with you.

Amendment No. 1293 is disallowed as verbal.

The article is open for general discussion. Mr. Mohamed Ismail Sahib.

Mr. Mohamed Ismail Sahib (Madras : Muslim): Sir, I support the amendments moved by Mr. K. T. M. Ahmad Ibrahim, of the intention to move which I have also given notice. Sir, in the footnote under article 60 the Drafting Committee says—

"The Committee has inserted this proviso on the view that the executive power in respect of Concurrent List subjects should vest primarily in the State concerned except as otherwise provided in the Constitution or in any law made by Parliament."

[Mohamed Ismail Sahib Bahadur]

The impression which this note creates in the minds of the readers is that some power or more power than is apparent in the article is being sought to be vested in the provinces but any such impression is removed by what the Chairman of the Drafting Committee says in para. 7 of his letter to the President of the Constituent Assembly. He speaks of the saving clause in the proviso and says—

"The effect of this saving clause is that it will be open to the Union Parliament under the new Constitution to confer executive power on Union authorities, or if necessary, to empower Union authorities to give directions as to how executive power shall be exercised by State authorities."

That is being made clearer by the next sentence in which he says—

"In making this provision the Committee has kept in view the principle that executive authority should for the most part be co-extensive with legislative power."

Wherever the Centre has been endowed with legislative power, it is being sought to endow it with executive power as well. Our amendments seek to correct this position and say that the Centre might have legislative power on the subjects included in the concurrent list but at least the executive power ought to be left in the hands of the units—the provinces. Sir, I have to make a few remarks in connection with the scheme of this Constitution. It is said that the American Constitution has been based on a suspicion of the Central authorities that the people in power in the Centre would seek to encroach, whenever there is an opportunity, on the powers of the States, *i.e.* the component parts or units and also of the individuals. It was contended not only at that time when that Constitution was made but also subsequently and even at the present time that such a conception of a Constitution is well based on facts, because it is admitted that when people come to power, more often than not the power corrupts them. Therefore too much of power should not be invested or placed in the hands of the executive and the supreme authority. But so far as our draft Constitution goes, the contrary seems to be the method which has been adopted. It has been based on the suspicion of individuals and the component units. The idea seems to be that the individuals will always be scheming and conspiring to set the authority at nought and the units would always be on the look-out for doing something wrong. Therefore, Sir, though the scheme of things as adumbrated in the Draft Constitution is alleged to be on a federal basis, it is really over-weighting the Centre with too much power. That is not salutary at least under the circumstances obtaining in our country. That is not good to the country as a whole. Ours is a country of vast distances and a huge population. Therefore it is not conducive to efficiency to over-concentrate power in the Centre. Units must be left with adequate powers in their hands. It must not be the basis of this Constitution that patriotism and anxiety for the welfare of the people are the sole monopoly of the Centre. It must be admitted that the Provinces and individuals also are as patriotic as anybody else. Therefore, their rights and powers must not be sought to be encroached upon. The basis of this Constitution seems to be suspicion, in the first place of the individuals and then in the second place of the units. Sir, where the individuals are concerned, it has not even been conceded that individuals have got an irreducible amount of right to personal freedom. The personal freedom that has been conceded under article 15 is beset with serious, and not only a serious, but fatal modifications so much so these modifications have eaten up and swallowed up the right of personal freedom. It does not recognise that an individual has got any irreducible right which cannot be taken away by any law. And so far as the Provinces or Units are concerned, the same spirit seems to prevail. By various provisions, the powers of the Provinces are sought to be taken away; and in the interest of efficient government and good government, I think that spirit ought not to prevail; and the powers of the units must not be encroached upon.

These amendments of ours, while providing for the maintenance of the legislative powers of the Centre where the appropriate subjects are concerned, want to restrict the executive field of the Centre. Therefore, I think, they are very reasonable amendments which the House should support. I also know that if only Members are given the right to vote as they please, and if they are given the freedom of vote on this particular question at least, I know Sir, many Members will vote for these amendments. I know personally, Sir, there are many Members who feel with me in the matter of these amendments.

Mr. Vice-President : May I suggest that these remarks are not called for here?

Mohamed Ismail Sahib Bahadur : Sir, I am speaking, with your permission, of what I know to be the feeling of many of my colleagues here on this very important matter. In these amendments is involved the efficiency of the government and therefore the welfare of the whole country and of the people. These amendments seek to eliminate any friction or any conflict that may arise in the future between the Centre and the Provinces. If time and again the Centre seeks to encroach upon the rights and powers of the units, then, there is sure to be conflict and friction and these amendments only seek to remove any such conflict. And I wanted to make it clear that I am not alone in this feeling of mine, that I am not alone in this opinion, but that there are many others irrespective of party affiliations. Therefore, I would very much like that the colleagues of mine in this House be given freedom of vote to vote as they please. In that case, the Chairman of the Drafting Committee will know whether there is real support among the Members of this House for the idea contained in these amendments. If the Chairman of the Drafting Committee does not find it in his mind to accept these amendments, may I appeal to him, atleast to accept the amendment to our amendment moved by Pandit Kunzru which seeks to remove the words "or in any law made by Parliament". That at least would mean something. That would go to some extent to alleviate the conditions which I have got in mind and which I have been trying to express here. It will to a certain extent restrict the encroachment upon the powers of the Provinces. Therefore, I would appeal to the House and to the Chairman of the Drafting Committee to consider at least the much milder amendment which seeks to eliminate the words "or in any law made by Parliament".

Mr. Vice-President : I have just received information about the sudden death of Sir Akbar Hydari, Governor of Assam. He was not a member of this House, but we all know the excellent work he has done for our country and we also know that we are indebted not only to him but also to his father. The offices of the Government of India are already closed. It is true that His Excellency was not a member of this House, but still I think we ought to adjourn as atribute to him and as a mark of respect to his memory.

The House stands adjourned till 10 A.M. tomorrow.

The Constituent Assembly then adjourned till Ten of the clock on Thursday, the 30th December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 30*th December,* 1948

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—*(Contd.)*

Article 60—*(Contd.)*

Mr. Vice-President (Dr. H. C. Mookherjee): I have just received notice of an adjournment motion signed by Shri Mahavir Tyagi. It is ruled out of order under Rule 26 of the Rules of Procedure and Standing Orders of the Constituent Assembly of India. Does the House want to know the contents of this adjournment motion?

Honourable Members : Yes, yes.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Sir, on a point of order. Is an adjournment motion in this House permissible?

Mr. Vice-President : I shall read out the adjournment motion:

"I beg to move that the House do adjourn to discuss the attitude of the Government of India in respect of the recent attacks on Indonesia."

It is ruled out of order under Rule 26 of the Rules of Procedure and Standing Orders of the Constituent Assembly of India.

We can now resume discussion on article 60. Is Pocker Sahib Bahadur in the House?

B. Pocker Sahib Bahadur (Madras : Muslim): Mr. Vice-President, this clause as it stands is sure to convert the Federation into an entirely unitary form of Government. This is a matter of very grave importance. Sir, we have been going on under the idea, and it is professed, that the character of the Constitution which we are framing is a federal one. I submit, Sir, if this article, which gives even executive powers with reference to the subjects in the Concurrent List to the Central Government, is to be passed as it is, then there will be no justification at all in calling this Constitution a federal one. It will be a misnomer to call it so. It will be simply a camouflage to call this Constitution a federal one with provisions like this. It is said that it is necessary to give legislative powers to the Centre with regard to certain subjects mentioned in the Concurrent List, but it is quite another thing, Sir, to give even the executive powers with reference to them to the Centre. These provisions will have the effect of practically leaving the provinces with absolutely nothing. Even in the Concurrent List there is a large number of subjects which ought not to have found place in it. We shall have to deal with them when the time comes. But this clause gives even executive powers to the Centre with reference to the subjects which are detailed in the Concurrent List. In this connection, since the question has been expounded with great lucidity and ability by the Honourable Pandit Kunzru, I do not want to take up the time of the House in dealing with those aspects.

Now I would just like to point out one aspect of the matter and it is this. In such a big sub-continent as India, it will be very difficult for the authorities in the Centre to appreciate correctly the requirements of the people in the

[B. Pocker Sahib Bahadur]

remotest parts of this country, and this disability is there even with regard to legislation. But even if executive power, with reference to those laws dealing with subjects in the Concurrent List, is given to the Centre, the result will be that if any person is aggrieved by the way in which the law is executed in a very remote part of the country, he has to resort to the Centre which may be thousands of miles away, and it is not all people that can fly from one part of the country to the other in a few hours. I submit, Sir, that if we just look into the Concurrent List as it is, we shall find that there are very many subjects which ought not to have found a place in it. Anyhow, if those subjects are to be dealt with by an executive which is under the Centre, it will be a very great hardship, and I do submit that the machinery itself will be very inefficient and will be a blot on the administration.

If with reference to such subjects as are mentioned in the Concurrent List, the people suffer by the bad way in which the executive carries on the administration, then the result will be that the persons who have got a grievance will have to go a very great distance to have matters redressed, and even then it will be very difficult for the authorities in the Centre to realize the difficulties. It has been pointed out that as matters stand now as regards the subjects in the Concurrent List, the executive authority is in the provinces, and to do away with that practice and to centralise even the executive powers in the Centre with regard to all these subjects in the Concurrent List is a very backward step. Even from 1919 onwards when the Britishers were ruling, Provincial Autonomy was considered to be one of the objects of the Reforms. Now after we have won freedom, to do away with Provincial Autonomy and to concentrate all the powers in the Centre really is tantamount to totalitarianism, which certainly ought to be condemned. It has become the order of the day to call a dog by a bad name and hang it. Well, if some group of persons agitate for protecting their rights as a group, it is called communalism and it is condemned. If Provinces want Provincial Autonomy to be secured to allow matters peculiar to them to be dealt with by themselves, well, that is called provincialism, and that is also condemned. If people press for separation of linguistic Provinces it is called separatism and it is condemned. But I only wish that these gentlemen who condemn these 'isms' just take into consideration what the trend of events is. It is leading to totalitarianism; they ought to condemn that in stronger language. But I am afraid that the result of the condemnation of these various 'isms', namely communalism, provincialism and separatism, is that it leads to totalitarianism or even fascism. If there are separate organisations for particular groups of people who think in a particular way, well, that is condemned as communalism or as some other 'ism'. If all kinds of opposition are to be got rid of in this sort of way, well, the result is that there is totalitarianism of the worst type, and that is what we are coming to having regard to the provisions in this Draft Constitution as they stand.

Therefore, it is high time that we take note of this tendency and see that we avoid it and that we do not come to grief. I submit that at least as regards this provision, the amendment only seeks to make a very moderate demand, namely that with reference to matters in the Concurrent List, even though the Centre may have legislative power, the executive power with reference to those subjects should be left to the Provinces. This is a very moderate demand, and as has already been pointed out, honourable Members from various Provinces do feel that these executive powers should be left to the Provinces. But as we all know, they are not able to give effect to their views for obvious reasons, and I do not want to raise questions which may create a controversy. But I would submit that those honourable Members who do really feel that this amendment is one which is for the good of the people and that according to their conscience it ought to be carried, ought not to hesitate from giving effect to their views according to their

conscience. I would remind honourable Members that the duty we have to perform here is a very sacred one and that we are answerable to God for every act we are doing here, and if the defence is that we did not act according to our conscience on account of the whip that is issued, I submit, Sir, the honourable Members will realise that it is no defence at all.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, is it necessary to make all these references?

B. Pocker Sahib Bahadur : I am making all these references on account of facts which cannot be denied.

Mr. Vice-President : I am afraid Mr. Pocker Sahib is raising a controversy.

B. Pocker Sahib Bahadur : Mr. Vice-President, Sir, I have already stated that I do not want to enter into this controversy, but I have got every right to appeal to each and every honourable Member.

Mr. Vice-President : Nobody is preventing the honourable Member from doing it.

B. Pocker Sahib Bahadur : I have got a right of appeal to every individual Member to exercise his right of vote according to his conscience. That is why I am making these submissions. I have to make this appeal on account of obvious reasons on which I do not want to dwell. The honourable Members know, I know, and the Honourable the Vice-President knows it. Therefore, I do not want to dwell on those aspects of the case.

Mr. Vice-President : The Honourable the Vice-President, has absolutely no knowledge of this.

B. Pocker Sahib Bahadur : Well, Sir, I hope the Honourable the Vice-President, will not compel me to dilate more on this topic. Anyhow, I take in that the Honourable the Vice-President knows that Party Whips are issued and Members are being guided by these Whips, to put it in a nutshell. That is a fact well-known and cannot be denied, and therefore, it is, that I make this special appeal to the honourable Members that if they are satisfied in their conscience that this is a matter in which they should support the amendment, they ought not to hesitate from doing so, and if they so require they ought to seek the permission of the Party to which they are affiliated.

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, I feel it my duty to oppose the two amendments that are before the House, to article 60. Sir, the two amendments fall into two distinct categories. The amendment that was proposed by my honourable Friend Mr. K.T. M. Ahmed Ibrahim merely sought to cut out the proviso to sub-clause (1) of article 60. That was the original state of the amendment. If the amendments were carried in that particular form, it would mean that the Federal executive power will be co-extensive with the legislative power that the Union has, namely, not only will it extend to List I but it will also extend to List III.

Subsequently apparently my honourable Friend found out his mistake and has sought to amend the body of sub-clause (1) of article 60, which limits the power of the Federation in regard to executive matters and completely prevents it from exercising it in the field of Concurrent legislation. Well, that, Sir, the House is aware, will mean going back on the present provisions of the Government of India Act. The position was remedied by my honourable Friend Pandit Hirday Nath Kunzru. With his characteristic precision he framed an amendment which will exactly fit in with the position that was envisaged in the Government of India Act of 1935. It does not concede any more executive power to the Centre than what it has under the Government of India Act, 1935. Sir,

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there is also a considerable amount of difference in the approach of the Movers of the two amendments. The three speakers who supported the amendment of Mr. Ibrahim, including the mover, objected to the proviso to article 60(1) on political grounds. My honourable Friend Pandit Hirday Nath Kunzru objected to it on theoretical grounds. Let me first deal with my honourable Friend Pandit Kunzru's objections. He said that Federation or Federalism in in the Draft Constitution before the House will become a farce if the position that is taken up by the Government of India Act in regard to the sphere of executive action that could be exercised by the Central Government in the concurrent field is changed, if the i's are dotted or the t's are crossed. Pandit Kunzru is a person who is well known for his wide reading. His experience is profound and I shall not seek to controvert his right to lay down the law. But, nevertheless, he made a fundamental mistake in saying that there is a particular type of federalism or constitution which alone can be called federal and that the word 'Federal' or 'Federalism' had a complete connotation of its own, excluding every possible inroad into it. I must also point out that Pandit Kunzru made a big blunder in characterising our Draft Constitution as being something which would not be federal if the proviso of the article is retained.

Sir, in regard to what is a Federal Constitution, there are various interpretations. It varies widely. For instance, the Canadian Constitution which is one of the four prominent Federal Constitutions in the world is characterised by some as not being wholly federal. On the other hand it does happen that in the actual working of the Constitution, it is more federal than the Australian Constitution which, from the strictly constitutional point of view, is undoubtedly fully federal. It is said often times that a Constitution becomes Federal because of the fact that the component units are first formed and then the Centre is created. That is the opinion expressed by Lord Haldane in 1913 as an obiter in a matter that was referred to him arising out of an Australian litigation wherein he mentioned that the Canadian Constitution was not Federal in so far as, while the British North American Act was passed by Parliament, the Centre and the Provinces were created at the same time.

Similarly there are other views in regard to what makes a Federation. Another view is that the residuary power must lie with the units and not with the Centre. Where and how this fact exactly detracts from the concept of Federalism nobody knows. This particular aspect is emphasised by reference to the United States Federation. If that is so, undoubtedly the Draft Constitution before the House is not federal, for one reason that the residuary power is not vested in the units; for another reason that it (the Draft Constitution) creates both the Centre and the Provinces at the same time.

Sir, If we are to accept this view, we would be merely theorising in regard to Federation. I hold the view that we have no reason to take a theoretical view of the Draft Constitution at this stage. The concept of this Constitution is undoubtedly Federal. But, how far Federalism is going to prove to be of benefit to this country in practice will only be determined by the passage of time and it would depend on how far the various forces inter-act conceding thereby to the provinces greater or lesser autonomy than what we now envisage. But I will repeat once more the fact that in actual practice it has happened that in Canada the provinces have greater amount of liberty of action under a Constitution which is not avowedly fully Federal, than in Australia where the interference by the Centre into the affairs of the units has been considerable.

Pandit Hirday Nath Kunzru (United Provinces : General) : May I interrupt my honourable Friend to ask whether he is aware that in Canada the power of the provinces is greater than it is supposed to be because of the decisions of the Privy Council?

Shri T. T. Krishnamachari : It only supports my statement of fact that the Indian Constitution, when it is passed, will either become fully federal or partially federal in actual practice over a period of time. It may be that if we are going to leave the field of authority for the Centre and the units completely undefined, the courts may interpret it one way or the other. It is conceivable that if we say nothing about the exercise of the executive powers in the Concurrent List, the courts may interpret it one way or the other and the Constitution may become more federal or less federal as circumstances arise and the views of the judges in this regard and the decisions they arrive at. So, I think the interruption of my honourable Friend is without any force and I see no reason why I should answer it at greater length.

Sir, in regard to this question of executive action in regard to concurrent powers on which actually the objection is being taken, the position is that the Government of India Act has been framed with a certain amount of attention for precision. Professor K. C. Wheare, in a short but exhaustive work on Federal Government, has pointed out this particular fact—though he does not concede that the Government of India Act establishes a full federation—that that Act is one of the most notable examples of Federation where the powers of the Centre and the units are clearly defined and the three Lists are more or less exhaustive.

Sir, in regard to the provisions of this Concurrent List, the Draft Constitution or the 1935 Act are by no means unique. The fact is that the Australian Constitution practically leaves the entire field of legislative action in the Concurrent List save for a few that are enumerated in Section 52 of the Australian Constitution. Section 61 which is the corresponding section in the Australian Constitution to article 60 of our Draft Constitution says that the executive power extends to the execution and maintenance of the Constitution and of the laws of the Commonwealth. And an attempt by a State to interfere with the free exercise of the executive power by the Commonwealth was declared invalid in 1903 in a case D'Emden vs. Pedden. The position in regard to the distribution of powers in the Australian Constitution is however nebulous and assuredly the framers of the Government of India Act were conscious of that fact and that is why they have framed the three lists which are far more precise.

Sir, if you look back to what happened in Canada where passage of time has more or less delimited the precise scope of Federal and Provincial executive power, we find that there has been room for friction in various important matters. And in the Rowell-Sirois Report on Dominion-Provincial Relations, certain changes have been recommended. They have recommended that in the field of labour legislation particularly, and in the field of social services like Unemployment Insurance, etc., the power should be given to the Federation not only for the purpose of legislation which it possesses to some extent, but also in the field of executive action. With this background let me, Sir, now examine the position in the Government of India Act in regard to the allocation of powers under the Concurrent List in view of our experience of the last twelve years.

Sir, the Joint Select Committee in dealing with this particular aspect of the

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separation of powers and also in investing the Central and Provincial Governments with executive powers in respect thereof have been rather careful.

Sir, they say—

"We think the solution is to be found in drawing a distinction between subjects in the Concurrent List which on the one hand relate, broadly speaking, to matters of social and economic legislation, and those which on the other hand relate mainly to matters of law and order, and personal rights and status. The latter from the larger class, and the enforcement of legislation on these subjects would, for the most part, be in the hands of the Courts of the Provincial authorities responsible for public prosecutions. There can clearly be no question of Federal directions being issued to the Courts, nor could such directions properly be issued to prosecuting authorities in the provinces. In these matters, therefore, we think that the Federal Government should have in law, as they could have in practice, no powers of administrative control. The other class of concurrent subject consists mainly of the regulation of mines, factories, employer's liability and workmen's compensation, trade unions, welfare of labour, industrial disputes, infectious diseases, electricity..... In respect of this class, we think that the Federal Government should, where necessary, have the power to issue directions for the enforcement of the law, but only to the extent provided by the Federal Act in question."

Sir, that was the plan envisaged in the Government of India Act. That was the reason why a sub-clause was added to Section 126, *i.e.,* sub-clause (2), which gives power to the Centre to give executive directions in so far as the subjects covered by Part II of the Concurrent List is concerned. Sir, I want to tell my honourable Friends in this House that in actual practice we found that so far as Part II is concerned executive directions were not adequate to achieve the objects of the legislation undertaken by the Centre. Sir, it raised a very important problem. Who is to be ultimately responsible for carrying out the objects of such legislation in a responsible government? The provincial governments are responsible to the provincial legislatures and it has happened so far that the provincial executive has often said, "Oh, the Centre has given its directions, we have no funds, we have no administrative machinery, we do not know what to do and it is unfair that it should be our business to do the actual work in these matters when somebody else lays down the law." The present scheme in the Government of India Act is defective by reason of the fact that the field of executive responsibility blurs. We do not know where it begins and where it ends, and one of the reasons why this proviso has been put in which has been carefully worded, is that, where the Government of India want to lay the executive responsibility squarely on the shoulders of the provinces or the units, it can do so by not mentioning in their legislation that they are possessed of any executive power in regard to any particular legislation. This is a variation of the provision contemplated in Section 126 (2) and it is a wise variation in so far as the lines of demarcation are clearly laid down. The Government of India where it is possible or necessary, perhaps in the field of social legislation, in social insurance, unemployment and perhaps labour, will take over the executive responsibility by laying down in the related Acts that the executive authority shall be that of the Government of India, Where there is no specific provision the executive responsibility will be that of the provinces and the provincial ministries cannot shirk their responsibility for carrying out the objects of the legislation. Sir, I wish that my honourable Friend, Mr. Jagjivan Ram, who has been in charge of some pieces of welfare legislation, would speak on this subject, because times without number we have found that we have had to sail very close to colourable legislation in such matters. That, Sir. I think is a very valid reason, a reason which is dictated by experience, for us to put a provision of the nature of the proviso in clause (1) of this article which I can assure you, does not detract an iota from the federal character of this Draft Constitution. After all, what is a federal constitution? It is one that lays down precisely the field where the units are supreme and another field where the Centre is supreme. Where it is not possible to demarcate this clearly it has got to be done in some other manner where the responsibility will

be precisely indicated, and this proviso to article 60 makes the constitution more federal than it would otherwise be. Therefore I think the objection of my honourable Friend, Pandit Hirday Nath Kunzru, is without any point; it is without any reference to the experience of the 1935 Act which has been gained during these twelve years; it is without reference to the theory and practice of federalism; it is without reference to the experience of Australia and Canada and therefore has got to be rejected.

Sir, I shall turn my attention to the other amendment, the originally imperfect amendment, which seeks to give greater powers to the provinces in regard to concurrent subjects, and practically limits the powers of the Centre in the executive field to nothing, which was moved by my honourable Friend, Mr. K. T. M. Ahmad Ibrahim and ably supported by Mr. Muhammad Ismail and Mr. Pocker. Sir, the House will be aware that these honourable Members are fairly important people, particularly Mr. Muhammad Ismail who happens to be the President of the Muslim League in India and the virtual successor to Mr. Jinnah. When he makes a political statement, it cannot be dismissed as being something which is of no value. One of the reasons why the Government of India Act is so elaborate, one of the reasons why such great emphasis on provincial autonomy was laid in the past, one of the reasons why we in this country agreed to the Cabinet Statement of May 16, 1946, was the fact that the Muslim League wanted complete freedom of action in the provinces which it controlled. Sir, that circumstance no longer exists owing to the dissection of the country into two. That circumstance has now faded into obscurity, and therefore it seems to me that my honourable Friend is simply starting the trouble from the beginning *viz.*, the agitation that provinces should have greater powers when actually there is no attempt to fetter the powers of the provinces. If there is any opposition to this Draft Constitution, it is a political opposition, rather than an opposition to any particular feature of this Draft Constitution. My honourable Friends have warned us that we have a conscience, that we have to act according to that conscience. I may tell the honourable Members of this House that their conscience will not be affected in any way if they approve of article 60, as it stands, that they may rest assured that there will be no inroads into the freedom of action of the provinces and that really no real limitation of the executive power of the provinces is contemplated. Provincial opinion will be adequately represented in the Parliament to be: the *pros* and *cons* of each particular piece of legislation contemplated in this article will be adequately canvassed before the Centre is granted executive power in regard to any subject which falls in the Concurrent List. I might again draw the attention of the House to what was mentioned in the Joint Select Committee's report in respect of the 1935 Act that they did not contemplate that even in the matter of giving executive directions under Section 126 (2), it would be done right over the wishes of the provinces, because after all the Centre was not something apart from the provinces. Even in the future the Central Legislature will only consist of representatives of the units. In one House it will be representative of the unit legislatures. In the other House it will be representative of the people of the units. The Centre can have no existence in the future apart from the provinces or units and why therefore suspect the *bona fides* of that legislature and say that that legislature will grant powers to the Centre in such a manner as would fetter the freedom of action of the units?

Sir, on the other hand, as I said once before, this proviso precisely delimits the functions of the Centre and the units. There will be no more ambiguity, no more blurring of responsibility. I feel that intrinsically the article is sound and the House will not, I have no doubt, be guided by the threats uttered by these appeals to conscience, the threat of the totalitarian state of things to come which my honourable Friends from Madras of the Muslim League think is going to come to pass. Sir, this article.....

B. Pocker Sahib Bahadur : It is not a fact that whips are being issued over such questions?

Shri T. T. Krishnamachari : I have no desire to answer my honourable Friend. Whips may be issued. We know what is being done. It is a matter of convenience. If some of us do not congregate together and get through the work that is to come before the House by mutual agreement, I am afraid this House will have to sit for three or four years. By acting together some of us, not exactly the members of one Party but a number of people who act together are only expediting the framing of this Constitution for our country. Well, I can conceive that my honourable Friend does not want a constitution for this country. If that is his idea, well, he might object to the method by which we are carrying on the work. Sir, I think these allegations are without any point. The basis of the opposition is political. It has its origin in the fact that the Muslim League never wanted India to be a strong country, with a strong government. Therefore, Sir, I hope the House will dismiss all these vague threats and all these allegations and support the article before it.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Mr. Vice-President, Sir, I am sorry that I cannot accept either of the two amendments which have been moved to this proviso, but I shall state to the House very briefly the reasons why I am not in a position to accept these amendments. Before I do so, I think it is desirable that the House should know what exactly is the difference between the position as stated in the proviso and the two amendments which are moved to that proviso. Taking the proviso as it stands, it lays down two propositions. The first proposition is that generally the authority to execute laws which relate to what is called the Concurrent field, whether the law is passed by the Central Legislature or whether it is passed by the Provincial or State Legislature, shall ordinarily apply to the Province or the State. That is the first proposition which this proviso lays down. The second proposition which the proviso lays down is that if in any particular case Parliament thinks that in passing a law which relates to the Concurrent filed the execution ought to be retained by the Central Government, Parliament shall have the power to do so. Therefore, the position is this; that in all cases, ordinarily, the executive authority so far as the Concurrent List is concerned will rest with the units, the Provinces as well as the States. It is only in exceptional cases that the Centre may prescribe that the execution of a Concurrent law shall be with the Centre. The amendments which have been moved are different in their connotation. The first amendment is that the Centre should have nothing to do with regard to the administration of a law which relates to matters placed in the Concurrent field. The second amendment which has been moved by my honourable Friend, Pandit Kunzru, although it does not permit the Centre to take upon itself the execution of a law passed in the Concurrent field, is prepared to permit the Centre to issue directions, with regard to matters falling within Items 25 and 37, to the Provincial Governments. That is the difference between the two amendments.

The first amendment really goes much beyond the present position as set out in the Government of India Act, 1935. As honourable Members know, even under the present Government of India Act, 1935, it is permissible for the Central Government at least to issue directions to the Provinces, setting out the method and manner in which a particular law may be carried out. The first amendment I say even takes away that power which the present Government of India Act, 1935, gives to the Centre. The amendment of my honourable Friend, Pandit Kunzru wishes to restore the position back to what is now found in the Government of India Act, 1935.

Pandit Hirday Nath Kunzru : I go a little beyond that. The second part of my amendment goes beyond any power which the Government of India now enjoy under the Government of India Act, 1935.

The Honourable Dr. B. R. Ambedkar: Well, that may be so. That I said is the position as I understand it. Now, Sir, I will deal with the major amendment which wants to go back to a position where the Centre will not even have the power to issue directions, and for that purpose, it is necessary for me to go into the history of this particular matter. It must have been noticed—and I say it merely, as a matter of fact and without any kind of insinuation in it at all,—that a large number of members who have spoken in favour of the first amendment are mostly Muslims. One of them, my Friend Mr. Pocker, thought that it was a sacred duty of every Member of this House to oppose the proviso. I have no idea.....

B. Pocker Sahib Bahadur : I have not said that, Sir. I only said that it is the duty of every Member to act according to his conscience.

The Honourable Dr. B. R. Ambedkar : By which I mean, I suppose that every Member who has conscience must oppose the proviso. It cannot mean anything else. *(Laughter.)*

B. Pocker Sahib Bahadur : Certainly not.

The Honourable Dr. B. R. Ambedkar : Now, Sir, this peculiar phenomenon of Muslim members being concerned in this particular proviso, as I said, has a history behind it, and I am sorry to say that my honourable Friend, Pandit Kunzru forgot altogether that history; I have no doubt about it that he is familiar with that history as I am myself.

This matter goes back to the Round Table Conference which was held in 1930. Everyone who is familiar with what happened in the Round Table Conference, which was held in 1930 will remember that the two major parties who were represented in that Conference, namely the Muslim League and the Indian National Congress, found themselves at loggerheads on many points of constitutional importance.

One of the points on which they found themselves at loggerheads was the question of provincial autonomy. Of course, it was realised that there could not be complete provincial autonomy in a Constitution which intended to preserve the unity of India, both in the matter of legislation and administration. But the Muslim League took up such an adamant attitude on this point that the Secretary of State had to make certain concessions in order to reconcile the Muslim League to the acceptance of some sort of responsible Government at the Centre. One of the things which the then Secretary of State did was to introduce this clause which is contained in Section 126 of the Government of India Act which stated that the authority of the Central Government so far as legislation in the concurrent field was concerned was to be strictly limited to the issue of directions and it should not extend to the actual administration of the matter itself. The argument was that there would have been no objection on the part of the Muslim League to have the Centre administer a particular law in the Concurrent field if the Central Government was not likely to be dominated by the Hindus. That was so expressly stated, I remember, during the debates in the Round Table Conference. It is because the Muslim League Governments which came into existence in the provinces where the Muslims formed a majority such as for instance in the North-West Frontier Province, the Punjab, Bengal and to some extent Assam, did not want it in the field which they thought exclusively belonged to them by reason of their majority, that the Secretary of State had to make this concession. I have no doubt about it that this was a concession. It was not an acceptance of the principle that the Centre should have no authority to administer a law passed in the concurrent filed. My submission therefore is that the position stated in Section 126 of the Government of India Act, 1935, is not to be justified on principle; it is justified because it was a concession made to

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the Muslims. Therefore, it is not proper to rely upon Section 126 in drawing any support for the arguments which have been urged in favour of this amendment.

Sir, that the position stated in Section 126 of the Government of India Act was fundamentally wrong was admitted by the Secretary of State in a subsequent legislation which the Parliament enacted just before the war was declared. As honourable Members will remember, Section 126 was supplemented by Section 126-A by a law made by Parliament just before the war was declared. Why was it that the Parliament found it necessary to enact Section 126-A? As you will remember Section 126-A is one of the most drastic clauses in the Government of India Act so far as concurrent legislation is concerned. It permits the Central Government to legislate not only on provincial subjects, but it permits the Central Government to take over the administration both of provincial as well as concurrent subjects. That was done because the Secretary of State felt that at least in the war period, Section 126 might prove itself absolutely fatal to the administration of the country. My submission therefore is that Section 126-A which was enacted for emergency purposes is applicable not only for an emergency, but for ordinary purposes and ordinary times as well. My first submission to the House therefore is this: that no argument that can be based on the principle of Section 126 can be valid in these days for the circumstances which I have mentioned.

Coming to the proviso,.....

B. Pocker Sahib Bahadur : With your permission, Sir, may I just correct my learned Friend? This Constitution is being framed for the present Indian Union in which there is not a single province in which the Muslims are in a majority and therefore there is absolutely no point in saying that it is the Muslim members that are moving this amendment in the interests of the Muslim League. It is a very misleading argument based on a misconception of fact and the Honourable Minister for Law forgets the fact that we in the present Indian Union, Muslims as such, are not in the least to be particularly benefited by this amendment.

The Honourable Dr. B. R. Ambedkar : I was just going to say that although that is a statement of fact which I absolutely accept, my complaint is that the Muslim members have not yet given up the philosophy of the Muslim League which they ought to. They are repeating arguments which were valid when the Muslim League was there and the Muslim Provinces were there. They have no validity now. I cannot understand why the Muslims are repeating them. (*Interruption*.)

Mr. Vice-President : Order, order.

The Honourable Dr. B. R. Ambedkar : I was saying that there is no substance in the argument that we are departing from the provision contained in Section 126 of the Government of India Act. As I said, that section was not based upon any principle at all.

In support of the proviso, I would like to say two things. First, there is ample precedent for the proposition enshrined so to say in this proviso. My honourable Friend Mr. T. T. Krishnamachari has dealt at some length with the position as it is found in various countries which have a federal Constitution. I shall not therefore labour that point again. But I would just like to make one reference to the Australian Constitution. In the Australian Constitution we have also what is called a concurrent field of legislation. Under the Australian Constitution it is open to the Commonwealth Parliament in making any law in the Concurrent field to take upon itself the authority to administer. I shall just quote one short paragraph from a well known book called " Legislative

and Executive Power in Australia" by a great lawyer Mr. Wynes. This is what he says:

"Lastly, there are Commonwealth Statutes. Lefroy states that executive power is derived from legislative power unless there be some restraining enactment. This proposition is true, it seems, in Canada, where the double enumeration commits to each Government exclusive legislative powers, but is not applicable in Australia. Where the legislative power of the Commonwealth is exclusive—e.g., in the case of defence—the executive power in relation to the subject of the grant inheres in the Commonwealth, but in respect of concurrent powers, the executive function remains with the States until the Commonwealth legislative power is exercised."

Which means that in the concurrent field, the executive authority remains with the States so long as the Commonwealth has not exercised the power of making laws which it had. The moment it does the execution of that law is automatically transferred to the Commonwealth. Therefore, comparing the position as set out in the proviso with the position as it is found in Australia, I submit that we are not making any violent departure from any federal principle that one may like to quote. Now, Sir, my second submission is that there is ample justification for a proviso of this sort, which permits the Centre in any particular case to take upon itself the administration of certain laws in the Concurrent list. Let me give one or two illustrations. The Constituent Assembly has passed article 11, which abolishes untouchability. It also permits Parliament to pass appropriate legislation to make the abolition of untouchability a reality. Supposing the Centre makes a law prescribing a certain penalty, certain prosecution for obstruction caused to the untouchables in the exercising of their civic rights. Supposing a law like that was made, and supposing that in any particular province the sentiment in favour of the abolition of untouchability is not as genuine and as intense nor is the Government interested in seeing that the untouchables have all the civic rights which the Constitution guarantees, is it logical, is it fair that the Centre on which so much responsibility has been cast by the Constitution in the matter of untouchability, should merely pass a law and sit with folded hands, waiting and watching as to what the Provincial Governments are doing in the matter of executing all those particular laws? As everyone will remember, the execution of such a law might require the establishing of additional police, special machinery for taking down, if the offence was made cognizable, for prosecution and for all costs of administrative matters without which the law could not be made good. Should not the Centre which enacts a law of this character have the authority to execute it? I would like to know it there is anybody who can say that on a matter of such vital importance, the Centre should do nothing more than enact a law.

Let me give you another illustration. We have got in this country the practice of child marriage against which there has been so much sentiment and so much outcry. Laws have been passed by the Centre. They are left to be executed by the provinces. We all know what the effect has been as a result of this dichotomy between legislative authority resting in one Government and executive authority resting in the other. I understand (and I think my friend Pandit Bharagava who has been such a staunch supporter of this matter has been stating always in this House) that notwithstanding the legislation, child marriages are as rampant as they were. Is it not desirable that the Centre which is so much interested in putting down these evils should have some authority for executing laws of this character? Should it merely allow the provinces the liberty to do what they liked with the legislation made by Parliament with such intensity of feeling and such keen desire of putting it into effect? Take, for instance, another case—Factory Legislation. I can remember very well when I was the Labour Member of the Government of India cases after cases in which it was reported that no Provincial Government or at

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least a good many of them were not prepared to establish Factory Inspectors and to appoint them in order to see that the Factory Laws were properly executed. Is it desirable that the labour legislations of the Central Government should be mere paper legislations with no effect given to them? How can effect be given to them unless the Centre has got some authority to make good the administration of laws which it makes? I therefore submit that having regard to the cases which I have cited—and I have no doubt honourable Members will remember many more cases after their own experience—that a large part of legislation which the Centre makes in the concurrent filed remains merely a paper legislation, for the simple reason that the Centre cannot execute its own laws. I think it is a crying situation which ought to be rectified which the proviso seeks to do.

There is one other point which I would like to mention and it is this. Really speaking, the Provincial Government sought to welcome this proviso because, there is a certain sort of financial anomaly in the existing position. For the Centre to make laws and leave to provinces the administrations means imposing certain financial burdens on the provinces which is involved in the employment of the machinery for the carrying out of those laws. When the Centre takes upon itself the responsibility of the executing of those laws, to that extent the provinces are relieved of any financial burden and I should have thought from that point of view this proviso should be a welcome additional relief which the provinces seek so badly. I therefore submit, Sir, that for the reasons I have given, the proviso contains a principle which this House would do well to endorse. *(Cheers).*

Mr. Vice-President : I shall now put the amendments to vote.

The question is:

"That with reference to amendment No. 1289 of the List of Amendments, in sub-clause (a) of clause (1) of article 60, between the words 'Parliament has' and the word 'power', the word 'exclusive' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That with reference to amendment No. 1289 after clause (1) of article 60, the words 'or in any law made by Parliament' be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That with reference to amendment No. 1289 after clause (1) of article 60 the following clause be inserted.

'(1a) Any power of Parliament to make laws for a State with respect to any matter specified in entries 25 to 37 of the Concurrent List shall include power to make laws as respects a State conferring powers and imposing duties, or authorising the conferring of powers and the imposition of duties upon the Government of India or officers and authorities of the Government of India as respects that matter, notwithstanding that it is one with respect to which the Legislature of the State also has power to make laws.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That the proviso to clause (1) of article 60 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That article 60 stand part of the Constitution."

The motion was adopted.

Article 60 was added to the Constitution.

Article 61

Mr. Vice President : The motion before the House is:

"That article 61 form part of the Constitution."

The first amendment, No. 1294, by Mr. Baig may be moved.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim) : Mr. Vice-President, I beg to move :

"That for the existing Clause (1) of article 61, the following be substituted:

'1(a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions,

(b) The Council shall consist of fifteen ministers elected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of a single transferable vote, and one of the ministers shall be elected as Prime Minister, in like manner.' "

Sir, the purpose of moving this amendment is firstly, to secure in the executive *i.e.,* the Cabinet, proper representatives and secondly, to secure representatives from all sections of the people. The method by which ministers are appointed to the cabinet as envisaged in the Draft Constitution and as has been the practice in the past under the Government of India Act, 1935, and previous thereto also, is that the leader of the party which has been returned in majority is called upon by the Governor or the Governor-General, as the case may be, and he is asked to form a government; and he chooses his colleagues in the Cabinet. That is the practice in the past and that is what is envisaged in this Draft, and that is in accordance with the form of government in what is called Parliamentary democracy. My conception of democracy is not the conception of democracy as can be considered, or as can be gauged from the system of government called Parliamentary democracy. According to me, Parliamentary democracy is not democracy at all. Democracy, according to me, is not a rule by mere majority; but it is rule by deliberation, by methods of deliberation on any particular matter, by taking into consideration all sections, who make up the people in general. Now, let us see what actually happens, at the time of the formation of a cabinet. Take for instance, the case of a Parliament consisting of 200 members. If 105 members were returned by a particular party, one of the members who is elected as the leader out of the 105—and he may have been elected by a majority of only 60, he is called by the President and is asked to form the Government. That is, out of two hundred members, the man who gets 60 votes is called by the President to form the government and he becomes the Prime Minister and this Prime Minister chooses his own men without reference to the will and to the opinion of his own party, or of the members of the Parliament. He may choose his own men. He is really in great difficulty sometimes. If he chooses a certain member as his Minister, there are others who are up against him; but he has been given the choice. So the net result is.....

Shri H. V. Kamath (C.P. and Berar : General): Sir, on a point of order. The second part of the amendment moved by Mr. Baig relates to the appointment of Ministers which forms the subject matter of article 62. So it cannot be moved as an amendment to article 61.

Mr. Vice-President : There is an amendment, I understand, which will cover your objection.

Mahboob Ali Baig Sahib Bahadur : Therefore, Sir, according to the Draft Constitution, the person who is supported by 60 persons out of a membership of 200 persons belonging to the House.....

Mr. Vice-President : Mr. Kamath will please turn to amendment No. 1302 standing in the name of Mr. Baig, and he will get the requisite information to answer his objection.

Mahboob Ali Baig Sahib Bahadur : He is called upon to form the Cabinet. He might choose any person as his Minister, who, in the opinion of his own party, may not be suitable for a ministership, not even taking into consideration the opinion of the entire House. Therefore, my submission is that this kind of appointment of the Executive to rule over the country is anything but democratic. In the first place, as I said, they are not chosen by the entire House consisting of 200 persons, and even the Leader who is called the Prime Minister and who forms the Cabinet is not elected by a majority of the House, and in the case of other members of the Cabinet, they are not chosen at all by the people.

It may, however, be said that the party has been returned in a majority and therefore the Leader has got the right to choose his men. But I submit, Sir, that it is by a legal fiction that these members of the Cabinet are chosen. It may so happen that if election takes place in the case of individual ministers, they may not be elected at all. Shall we then call these Ministers—the Ministers of the people? Can we say that they have been elected in a democratic way, and appointed in a democratic way? Surely not. It is only by a legal fiction that they are there. Therefore, my submission is that it is not the democratic way.

Still, it is said that Parliamentary democracy has been a success in England and other places and so on and so forth. My submission is that I do not agree with the statement that is Parliamentary democracy at all. Sir, I am rather amused, though I am very much concerned also when people say that Parliamentary democracy based upon party politics is the best method. I must say that this kind of democracy obtaining in what is called Parliamentary democracy is far from being democratic, and all the ills and all the evils of the internal revolutions and internal changes in governments in Europe, specially, are due to these political parties, one political party coming into power and the other political party trying to put it down. That is what is happening there. Can we not have democracy without parties and without any political parties? My conception of the future politics is non-party politics.....

An Honourable Member : Communal parties.

Mahboob Ali Baig Sahib Bahadur : Certainly not, Sir. You are wrong. Do not be obsessed with that idea; the sooner you get rid of it the better.

Mr. Vice-President : Mr. Baig, please address the Chair.

Mahboob Ali Baig Sahib Bahadur : I am addressing you, Sir. It is the tendency amongst some of our Friends that whenever a man, belonging to a different religion than them, speaks he has to be heckled. That is unfortunate. But I am propounding the idea whether we cannot have non-party politics.

Shri Algu Rai Shastri (United Provinces : General): It is a narrow-minded party politics view that you are propounding.

Mahboob Ali Baig Sahib Bahadur : If my friend wants an instance, I can quote him the instance of Switzerland. In that country you have not got what are called political parties being returned there. There, after members are

elected to the Parliament, they elect their own Ministers to the Cabinet. That is what has been happening there and for the last several centuries you have not had any revolutions in that country. There has been no such thing like one party coming into power and suppressing or oppressing another party and all that sort of thing.

What was the conception of democracy in the past? In those days it was not political parties that formed governments. Non-party politics prevailed and the best men were chosen from all sections of the people. They were sent to Parliament and these Members of Parliament themselves choose their rulers and executives.

Now, Sir, the reason why persons belonging to one political party are nervous about the party in power is that each political party is trying to retain power and when it is in power it exercises that power to oppress and suppress all other parties. Such things should not be. The only political party we should have is the party that works for the welfare of the country. If our representatives that are sent to the legislatures and to Parliament sit together and deliberate about which is the best method of democracy and promulgate laws which are beneficial to the people, be it for nationalization or for any other purpose, where is the necessity, I ask, then for political parties?

Pandit Thakur Dass Bhargava (East Punjab : General): How will you ensure collective responsibility?

Shri Algu Rai Shastri : How will you ensure collective responsibility? That is the question.

Mahboob Ali Baig Sahib Bahadur : When there are no political parties, the Cabinet that will be chosen will be non-political and the only aim before their mind will be the welfare of the country and they will co-operate with one another for that purpose. That is my conception. Therefore, as I submitted, the present method by which the Prime Minister and the members of the Cabinet are chosen is something which cannot be called democratic, because all the members do not have a hand in choosing the Premier. Their own party men have the right to choose and even in the party, if the leader gets one vote more than his opponent, he becomes the leader and it is he who chooses the other members of the Cabinet. Therefore, the appointment of these Ministers to the Cabinet is something which is undemocratic and cannot be called democratic at all. That is the first point I would like to urge.

In the second place I am visualizing to myself how to get rid of all the nervousness and troubles that countries have in this world on account of such political parties, such as, the Communist Party, the Socialist Party and the Democratic Socialist Party, all of which come into existence, each with its own programme, and when in power, in order to retain that power, suppress and oppress others. There is no necessity for all this. Every party or group will proclaim that its programme is the best for the country. But when the aim is the good and welfare of the country, is there any necessity for any division amongst the persons calling themselves as members of the Socialist Party, the Democratic Socialist Party, the Communist Party, and so on? So, from that point of view, I am visualizing a state of things in which the members who are sent by the people should choose their own men and elect them to the legislatures. That is the democratic method.

Therefore I move that due consideration may be paid to my point of view and I hope that Members will not be so uncharitable as to stigmatise this because I am a Mussalman and think I have something else in my mind. There is nothing ulterior in my mind at all. We are entitled to talk on general topics without being accused of ill motives.

Shri R. V. Dhulekar (United Provinces : General): May I know from you whether Switzerland is a country or a cosmopolitan hotel?

Mr. Vice-President : You need not answer that question. The next amendment is in the name of Prof. K. T. Shah—amendment No. 1295.

The Honourable Shri K. Santhanam (Madras : General) : There is a similar amendment in his name, amendment No. 1300, and that may be moved also.

Mr. Vice-President : I wish to inform the honourable Member that there are certain amendments to this amendment.

So will the honourable Member move the amendments as I call them out Prof. Shah—amendment No. 1295.

Prof. K. T. Shah (Bihar : General): Sir, I move:

"That in clause (1) of article 61, the words 'with the Prime Minister at the head' be deleted."

The article as amended would read:

"There shall be a Council of Ministers to aid and advise the President in the exercise of his functions."

In suggesting that the designation of the Prime Minister should be kept out of the Constitution, I am not specifically opposed to the institution of the Prime Minister. The Prime Minister as an institution has been well-known to the Constitution of England ever since Sir Robert Walpole was in charge of that office. And yet to the British Constitution even today he is not known. All the social status, official prestige, and other precedence he has got is by way of Orders in Council, than by a specific provision in the Constitution.

Mr. Tajamul Husain (Bihar: Muslim): May I know from Prof. Shah that, though he says that the Constitution of England does not know whether the Prime Minister exists, is it not a fact that the whole world knows that there is a Prime Minister of England?

Prof. K. T. Shah : I have not said that the Prime Minister as an institution should be abolished. But I am only suggesting that he should be kept out of the Constitution. That does not mean that he should not be known as Prime Minister, or he should not exist in fact. Nothing of the kind. It only means that, as far as the Constitution goes, the Ministers should be described as Ministers by themselves; and any separate importance or status or description should be kept out of the Constitution to permit a degree of flexibility, which may otherwise be lacking.

A Minister of Finance we do not describe here as a Minister of Finance likewise in the case of a Minister of Defence, though there may be Minister of Defence, we do not provide for one specifically in the Constitution. Similarly, there will be the Prime Minister, without the Constitution providing for that office in so many words or describing him as such, and making him at integral part of the Constitution. In fact, of course, we should always have a Prime Minister.

As I started by saying, Sir, the institution of the Prime Minister is a very useful one, and may serve as a machinery for holding together a party: a means to expedite business, regulate and distribute work and, in many other ways, be a useful help in working the Constitution.

But on the theoretical side of the Constitution, I submit it is not absolutely necessary—and I rather think it is not even desirable—that we should insist upon the retention of the Prime Minister *qua* Prime Minister, as the head of the Council of Ministers.

The second reason I have for suggesting this amendment is that I regard the Ministers to be not only equal amongst themselves, but because, if for any reason, the Prime Minister may be unwelcome or any of his colleagues becomes unwelcome, we should not be obliged to have a complete change of the entire Ministry. The power which this Constitution as a Constitution seeks to confer

upon the Prime Minister makes it inevitable that a degree of power will concentrate in his hands, which may very likely militate against the working of a real, responsible and democratic Government.

It may be,—it has often happened,—that only a particular Minister is unwelcome on a particular occasion; or that a particular policy of Government is unwelcome. Now, if only a particular Minister is unwelcome, I personally think it is undesirable to sacrifice the whole Cabinet under the doctrine of collective responsibility, which comes on later in this article. We should rather provide for the possibility of dropping one or another Minister, without the necessity of changing the entire Cabinet. It may be that with the authority that the Prime Minister will possess, he will still be able to drop out one Minister, and yet carry on the Government as a collective Cabinet substituting the entire Ministry by another.

I consider, however, that the danger becomes greater when the Prime Minister himself may be the object of such want of confidence or unpopularity. At such a moment the Prime Minister should have the right, against perhaps the majority of his own colleagues, to dissolve Parliament, or rather the House of the People; and at least have a chance of one more delay to vindicate himself if he so desires.

I hold the view, Sir, that this would not only be in the interests of real, responsible and democratic Government functioning; but also in the interests of the Ministry concerned, or its policy. Accordingly, I have put forward this amendment, which, however, I repeat, does not by convention make it impossible for the Prime Ministership continuing, nor exclude the powers and functions which we now associate with the Prime Minister being vested in one such Minister. I commend the amendment to the House.

Mr. Vice-President : Amendment No. 1296 standing in the name of Shri Ram Narayan Singh. The Member is absent.

(The amendment was not moved.)

Then, amendments Nos. 1297 and 1298 standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam. They may be moved together.

Mr. Mohd. Tahir (Bihar : Muslim): Mr. Vice-President, Sir, I beg to move:

"That at the end of clause (1) of article 61 the following be inserted:

'Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion.' "

If this amendment is accepted, then the article will read thus:

"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 except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

Now, my second amendment is as follows:—

"That the following new clause be inserted after clause (1) of article 61 and the existing clause (2) be renumbered as clause (3):

'(2) If any question arises whether any matter is or is not a matter as respects which the President is by or under this Constitution required to act in his discretion, the decision of the President in his discretion, shall be final and the validity of any thing done by the President shall not be called in question on the ground that he ought or ought not to have acted in his discretion.' "

In moving these amendments, I want that the President of India, although he is a 'nominal President' in the words of my honourable Friend Mr. Kamath, still I want that the President should not be tied down all round. At least this House should be generous enough to give him the freedom of using his discretionary powers. In introducing this exception, I would submit that it is not a novel exception; if you will be pleased to look at article 143 of the Draft Constitution you will find that the same exception has been allowed in respect of the

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Governors and the Ministers of the State. When the Governors of the States have been given power to exercise certain powers in their discretion, I do not see any reason why this innocent power should not be granted to the President of India.

I need not make any long speech in this connection. I close my speech with the hope that my honourable Friend Dr. Ambedkar will consider this question seriously and decide in favour of my amendments. With these few words, Sir, I move.

Mr. Vice-President : Then there are amendments Nos. 1299 and 1300 by Prof. K. T. Shah.

Prof. K. T. Shah : May I move both of them together? There is a further amendment to one of them.

Mr. Vice-President : Yes.

Prof. K. T. Shah : Sir, I beg to move:

"That at the end of clause (2) of article 61, the words 'except by the High Court of Parliament when trying a President under section 50' be inserted."

As advised by you, I will also move my amendment No. 1300 now.

I beg to move:

"That after clause (2) of article 61, the following new clauses be inserted:—

'(2A) On every change in the Council of Ministers, and particularly on every change of the holder of Prime Ministership, the Prime Minister (alternatively, the President) shall present the new minister as the case may be to the People's House of Parliament, and shall ask for a vote of confidence from that body in the particular minister newly appointed. In the event of an adverse vote in the case of a particular minister, the minister concerned shall forthwith cease to hold office and a new minister appointed. If a vote of confidence in the Council of Ministers collectively is refused, the Council as a whole shall resign and a new Ministry formed in its place.

(2B) Every minister shall, at the time of his appointment, be either an elected member of one or the other House of Parliament, or shall seek election and be elected member of one or the other House within not more than six months from the date of his appointment, provided that no one elected at the time of a General Election, and appointed minister within less than six months of the date of the General Election, shall be liable to seek election.

(2C) No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets elected to one or the other House of Parliament within six months of the date of his appointment.

(2D) Not less than two-thirds of the members of the Council of Ministers shall at any time be members of the People's House of Parliament; and not more than one-third of the members of the Council of Ministers shall at any time be members of the Council of States. Members of the Council of Ministers may have such assistance in the shape of Deputy Ministers or Parliamentary Secretaries as Parliament may by law from time to time determine, provided that no one shall be appointed Deputy Minister or Parliamentary Secretary who at the time of his appointment was not an elected member of either House of Parliament, or who is not elected within six months of the date of his appointment to a seat in one or the other House of Parliament.

(2E) No one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted of treason, or of any offence against the sovereignty, security, or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption and liable to a maximum punishment of two years' rigorous punishment."—

Mr. Vice-President : The honourable Member may move amendment No. 47 in List IV of the Fifth Week.

Prof. K. T. Shah : I beg to move:

"That in amendment No. 1300, just moved by me, at the end of clause (2E), the following be added:—

> 'Every Minister shall, before entering upon the functions of his office, declare all his right, interest or title in or to any property, business, industry, trade or profession, and shall divest himself of the same either by selling all or any such right, interest, or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further, shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandisement of his family in any act he may do or appointment he may have to make.' "

Sir, with regard to amendment No. 1299, I would like it to be realised that, ordinarily, the advice that any Minister may have tendered to the President should be regarded as strictly confidential, and, therefore, not open to enquiry in any ordinary manner. But if and when it should happen that either the President or any Minister is on trial, particularly the President, and Parliament has ordered an enquiry either by itself in the process of impeachment, or caused any such enquiry to be made, it is necessary in the interests of justice, where particularly the very advice tendered is in question, whether or not the Constitution has been followed or violated, then it is but right and proper that the High Court or Parliament should been titled to enquire into the question as to what advice was tendered.

The question would turn, in such an event, upon a question both of fact and of opinion; and the fact in that case would be the advice given to the President, who can, under the scheme of this Constitution, always plead that he acted in accordance with the advice of his Minister. If the advice is not to be enquired into by anybody, then I think it would go hard with the President, when and if he should be impeached, that he is not able to produce his best defence in the shape of the advice which his Minister gave him. On that ground, I think the amendment I have suggested would meet such a contingency, and as such ought to be accepted.

As regards the next amendment, I would like to point out that it deals with three or four important matters, which I do not find equally clearly provided in this Constitution and in this place. The Ministers being collectively responsible to the legislature, it is obvious that they must be members of that body. Later on in this Constitution, there are clauses dealing with the legislatures in which some provisions of that kind occur. To those clauses I have the honour of giving notice of some amendments. But here, I think, is the proper place where we should insert a definite provision, that the Ministers who are responsible to Parliament should have a seat at the time of the formation of the Ministry in the Parliament, in either House of Parliament; or that, if they have no such seat, then within six months of their appointment as Ministers, they should find seats. This is a very simple proposition, conformable to the practice prevailing in widely popular Constitutions, like that of England; and as such ought to find no opposition.

Sir, the other matter that I have suggested is not an absolute one. I have only suggested that not less than two-thirds of the members of the Council of Ministers should at any time be members of the House of the People. The House of the People should obviously have a greater importance, since a vote of confidence in that body alone would sustain the Ministry. That being so, the presence of a considerable majority of Ministers in that House is I think of the utmost importance. The other House, being an equal partner or concurrent in most of the functions of Parliament, it follows that that body should also have a certain number of Ministers present therein, who would be able to explain the Government point of view or the Ministry's point of view to that body. Therefore, I have suggested that not less than two-thirds should be present in the Lower House, and not more than one-third in the Upper House

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or the Council of States. This also corresponds roughly with the membership, under this Constitution, of the House of the People and of the Council of States respectively. I, therefore, think that that particular amendment also should not in any way be objected to.

The point further that Ministers, whatever they call themselves, should be entitled to assistance by way of Parliamentary Secretaries and Deputy Ministers is a matter of convenience in Parliamentary procedure. It is necessary that, by the mere absence or inability to attend for any Minister owing to overcrowded time with public business for the Chief or any other Ministers, it may not happen that the House has in it no one to explain the Ministry's point of view in regard to any matter that is coming before the House. The Constitution should accordingly provide for or facilitate the appointment of such Parliamentary assistance as is contemplated in this clause of my amendment in the shape of Deputy Ministers or Parliamentary Secretaries as they may be called.

Obviously these Ministers would not be Ministers of the same rank as the Chief or Cabinet Ministers. They should be expressly and clearly declared by the Constitution to be only aides, or assistants, to the Cabinet Ministers in charge of the various departments of State. But their appointment must be specifically provided for in the Constitution, and not be left to the exigency of the moment for a particular Ministry.

The number and the exact functions of these assistant Ministers may be determined by Parliament from time to time, so that these appointments would not be a mere matter of executive decree which Parliament need not confirm, or may not be required to confirm.

The doctrine of collective responsibility that this article is based upon would require, in my opinion, that the vote of confidence of the House should be available for each new appointment, and also for the collective Ministry as well when first appointed; and if the vote is not forthcoming, the Minister or the Ministry, should resign and a new one appointed in his or its place.

Lastly, Sir, is the question of rectitude of the Ministers concerned in their official duties. On an earlier occasion; while dealing with the President. I had the honour of making the suggestion that the President should declare all his right, title and interest in any business, property, trade or industry, that he may have held or carried on before election; and that such right, title, etc., should be either sold or be disposed of; or should be made over to be held in trust by the Government during the period that he holds the office of President. I was told, Sir, at that time that the President being more or less a figurehead or ornamental chief executive of the State, as he would have no powers which may at all injure the interests of the State, it would be unnecessary to compel him to disclose his right, title and interest, to require the same to be disposed or to be made over to the Government to be held in trust for him during his term of office. At that time I was further told that if such a suggestion were made in regard to the executive authority proper, *viz.,* the Ministry, then perhaps it may be considered.

I am not so foolish as to believe that this very guarded statement,—I cannot call it an assurance,—would be strictly acted upon, particularly as I have the misfortune to put forward that idea. Taking, however, the Draftsman to be also the spokesman in this matter, may I venture to remind him of his very guarded and carefully worded assurance—I would hardly call it an assurance—or the observation that he had made, and ask him to consider this question favourably at least at this stage; and to see whether, if not in my words, at least in some other words, some such assurance may be given so that the Ministers, the real executive heads of the country, may be free from temptation,

and may devote themselves exclusively to the interests of the country, without thinking of themselves or of their families. I hope this amendment will be accepted.

Mr. Vice-President : There is an amendment to this amendment No. 46 in the name of Mr. Kamath.

Shri H. V. Kamath: Mr. Vice-President, Sir, I move:

"That in amendment No. 1300 of the List of amendments, in the proposed new clause (2E), all the words occurring after the words 'moral turpitude' be deleted."

My Friend, Prof. Shah, has just moved amendment No. 1300 comprising five sub-clauses. I dare say neither Dr. Ambedkar nor any of my other honourable Friends in this House will question the principle which is sought to be embodied in Clause (2E) of amendment No. 1300 moved by Prof. Shah. I have suggested my amendment No. 46 seeking to delete all the words occurring after the words "moral turpitude" because I think that bribery and corruption are offences which involve moral turpitude. I think that moral turpitude covers bribery, corruption and many other cognate offences as well. Sir, my friends here will, I am sure, agree with me that it will hardly redound to the credit of any government if that government includes in its fold any Minister who has had a shady past or about whose character or integrity there is any widespread suspicion. I hope that no such event or occurrence will take place in our country, but some of the recent events have created a little doubt in my mind. I refer, Sir, to a little comment, a little article, which appeared in the Free Press Journal of Bombay dated the 8th September 1948 relating to the **** Ministry. The relevant portion of the article runs thus :

"The Cabinet (the * * * * Cabinet) includes one person who is a convicted black marketeer, and although it is said that his disabilities, resulting from his conviction in a Court of Law, which constituted a formidable hurdle in the way of his inclusion in the interim Government, were graciously removed by the Maharaja."

Mr. Vice-President : I did not hear you. Otherwise I would not have allowed you to quote any names.

Shri H. V. Kamath : I am only reading from a written article in a paper.

Mr. Vice-President : I am helpless now. I would not have allowed you to give the name of the State but I would have allowed you to read the extract.

Shri H. V. Kamath : "Although the disabilities were graciously removed by the Maharaja, how can the public forgive and forget his sin against society? How can a Government, having in their fold such elements, be called a popular Government? Inclusion of such elements, apart from being a mockery of democracy would blot out the prestige of Government, and would consequently fail at its very inception to create enthusiasm and confidence in the public mind. Will this anomaly be rectified before it is too late?'

I do not know if this was absolutely justified but then to give even a handle to newspapers writing in this fashion about any Ministry or any Government is certainly not creditable to the Government nor is it in the public interest. I do not know whether this anomaly was rectified later on. I hope that it will be a disqualification imposed on any prospective Minister of any State or in the Central Government of our country.

It may be argued that this particular amendment has no place here and we might as well prescribe this disqualification in article 83 which relates to the disqualifications of a member of the House of the People, because a Minister will be chosen from among the Members of the House of the People, but there is one difficulty in this matter, which I would request Dr. Ambedkar to clear in the course of his reply to this debate. Article 83 as it stands, includes no disqualification of this nature. There is an omnibus sub-clause in it which reads:

"(e) if he is so disqualified by or under any law made by Parliament."

[Shri H. V. Kamath]

Certainly I visualise the possibility, nay, the certainty of Parliament prescribing various disqualifications, but certainly that Parliament will assemble after the elections under the New Constitution, after perhaps Ministries have been formed in the States and in the Centre, and therefore, if article 83 does not specifically lay down the disqualifications for the Members of the House of the People or the Ministers, we cannot be certain that certain persons who have been guilty or who have been suspected of certain offences will be excluded from the membership of a Cabinet in a State or at the Centre, because Parliament if it takes cognizance of this particular aspect of the matter, after Governments have been formed in the State and at the Centre, will certainly meet and pass a law, but that will be subsequent to the formation of the Government in the States and in the Centre. Therefore, at the very inception or initiation of this Constitution, we must have provision in this regard imposing disqualifications with regard to the Members of State or the Central Cabinets.

I, therefore, Sir, move this amendment to the effect supporting Prof. K. T. Shah's amendment, [the last part of it, (2E) of 1300] and I move that the words occurring after the words "moral turpitude" be deleted, because their import is comprised in the words "moral turpitude".

Mr. Vice-President : Before I call upon the next Member who has an amendment in his name, I would like to have the permission of the House to this effect that in our official proceedings when the extract from that paper occurs, the name of the State should be represented by stars. Is the necessary permission given? It would look more dignified. We have got to keep up the prestige of this House and that is one way of doing it.

Shri H. V. Kamath : I have no objection.

Mr. Tajamul Husain : No one has any objection.

Mr. Vice-President : Thank you.

(Amendment No. 1301 was not moved.)

Mr. Vice-President : The article is now open for general discussion.

(To Shri Mahavir Tyagi) There are a large number of Members who want to speak, and I therefore ask you to be as brief as possible.

Shri Mahavir Tyagi (United Provinces : General): Mr. Vice-President, Sir, I do not want to take more time of this House, but I would like to point out one thing. My honourable Friend, Mr. Mahboob Ali Baig has suggested that the Cabinet should be elected by the House on the basis of the single transferable vote system. It seems to be quite a good thing to use such high sounding words everywhere, but my friend forgets that it was to avoid the evil of two or three or, as my friend suggests, fifteen minds working separately in a Cabinet that we had to undertake such a tremendous sacrifice. The country had only recently the experience of a cabinet in which there were two parties working together. If the Cabinet were not so evilly composed by the British, we should not have partitioned India into two. We have given away the best and the most precious part of our land, and have separated willingly. We have obtained this unanimity in the Cabinet at a very great price indeed, and at a very great cost. Thousands of our friends and citizens of this country were killed and massacred on the other side, and thousands of equally good people, who were quite innocent, were killed on this side too. After all that has happened and after this bitter and bloody experience of ours, does my friend still insist on composing a cabinet in which there will be so many parties represented? An election, by the single transferable vote, means that any man who has 30 votes at his command will come into the Cabinet which deals with the highest priority secrets of the State; it decides upon budgets; it has so many treaties

and other important functions to perform. Do you mean to suggest that as many parties as there are in the House should all come into the Cabinet, so that they may never decide an issue or keep a secret? Are we going to throw ourselves into such a chaotic condition as to have a Cabinet which will not be of one mind? Sir, I do not want to dilate on it. The House understands that no Cabinet can live even for a day if all the members of the Cabinet are not of one mind.

Then again, my honourable Friend, Prof. K. T. Shah proposes that whenever a Minister is appointed by the Premier, he should seek the vote of confidence of the House. Although obviously this is true, like the Premier all other Ministers must also have the confidence of the House, but then again, there is one point slightly finer and that is if every member of the Cabinet is required to seek votes for himself or is put to trial on the first day he is appointed. It will mean that only such persons will be Ministers as will have their own followings and personal parties in the House. Such a minister will have a tendency to keep his personal party always alive and active and aloof. In fact when a Minister comes and joins a Cabinet, he merges his whole self, and all his influence into the Cabinet. He has no voice of his own; he speaks the voice of the Premier and acts according to the decisions of the Cabinet. In the Cabinet he has no personal entity left because he becomes absolutely one with the whole Cabinet. If there are 15 ministers, every one of them becomes an indivisible part of the whole Cabinet. The Premier speaks for himself and his Cabinet, and the Ministers for the Cabinet and the Premier. So under these conditions if the amendment of Prof. K. T. Shah is accepted it will virtually mean that the Premier will be on trial whenever another Minister is appointed. It is always a vote of confidence in the Premier. The House can appoint only one Premier. And once a Premier is appointed, he then takes into his Cabinet colleagues of his own choice with whom he can share all the secrets and responsibilities of the State.

How can he allow every Minister to keep a separate circle of his own personal influence in the House? If the Ministers will have such sort of relationships with the members, the Cabinet will be open to all sorts of corruption, because no one can keep a number of members always ready to back him as his pocket Borough, unless he tries to appease them. It is always unhealthy and undemocratic that Ministers should be allowed to retain their own small influences in the House. In a democracy, it is the majority party which is given the power to rule, to administer. The majority party decides upon a Premier, because the wish of the whole country is that such and such a party will rule. The Cabinet therefore has to be loyal to the majority party which has the mandate of the people to run the Government on their behalf. The administration shall be run on the lines of the manifesto which has been approved by the general electorate. Therefore, I submit that the Cabinet must be of one mind, and it could be of one mind only when all the members come through the Premier and look up to him and not to the House for their sanction. They must be popular in the House; but they must be popular to bring strength to the Premier, to bring strength to the party and not popular individually. Every Minister pools his personal strength, influence and following together with his colleagues completely, and thus enjoys the loyalty of and draws his strength from a much bigger group of members in the House. I therefore submit that both these amendments will stultify the whole fabric of democratic Constitution. This type of group-cabinet has nowhere been tried so far. I therefore press that both the amendments must be opposed on principle and I oppose the amendments.

Mr. Vice-President : Mr. Raj Bahadur from Matsya Union. I would request you to be brief because there are a number of Members who want to speak.

Mr. Tajamul Husain : Five minutes to each, Sir.

Shri Raj Bahadur (United States of Matsya): Mr. Vice-President, Sir, I join my honourable Friend Shri Mahavir Tyagi, in opposing the amendment that has been moved by Mr. Mahboob Ali Baig. Mr. Mahboob Ali Baig has put forward an amendment which unfortunately shows a tendency on the part of some of the Members in this House to get back somehow the spirit of separatism and division by one method or another. It is unfortunate that despite the generous attitude that the Congress party as the majority party has shown towards all the minority parties in general and the Muslim minority in particular, such like things should come in. I see within and behind the lines of this amendment a devise to introduce the evil of communalism and separatism by the back-door method. *(Hear, hear).*

I submit that Mr. Mahboob Ali Baig has advanced three main arguments in favour of his amendment. Firstly, he says that Parliamentary democracy is an evil and it is no democracy at all. I am surprised to hear such a categorical statement made on the floor of this House. We know that Parliamentary democracy has been on the anvil of experience during the course of three hundred years in one country at least, and we also know that leaving certain notable exceptions almost all the countries of the world are today trying to achieve and progress towards the attainment of Parliamentary democracy. It is too late in the day therefore to curse Parliamentary democracy as an evil. He says that it would be unfortunate, if a majority of sixty per cent should be allowed to rule one hundred per cent of the population. I would submit that all acts in human society have got to be judged and decided on the principle of "*summum bonum*", greatest good of the greatest number, and that judgment of decision could be made by the electorate as such on the basis of majority of votes only. To say that the type of democracy that obtains in Switzerland would suit our requirements is not to state the whole truth at all. Nor would it be a sound proposition. We know that in Switzerland three distinct nationalities, German, French and Italian combined together in a confederacy. It was done in order to suit the exigencies of their own situation. I would submit that the type of democracy in Switzerland would not suit our requirements at all. We have had some taste of it in the days when the Muslim League Party, through the "good offices" of Lord Wavell entered into a sort of coalition with the Congress Party. What ensued thereupon is recent history. We know how from top to bottom the virus of separatism and communalism permeated the rank and file of the services and the entire body politic. We know how difficult it became to make any progress. We know how we could not execute or implement any schemes of policies. The result of all this was that the country had to be partitioned. We are not going to repeat the same experiment again. I would submit in the end that it is only meet and proper that we should cast away our prejudices and bias, if any, against the unity or the unification of the country. With these words, I oppose the amendment that has been put forth by my honourable Friend Mr. Mahboob Ali Baig.

Mr. Tajamul Husain : Sir, I shall be very brief in my statement. I take up first amendment No. 1294 moved by my honourable Friend Mr. Mahboob Ali Baig. Now, article 61 says: "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." Mr. Mahboob Ali Baig's amendment is that there shall be fifteen Ministers and secondly, that they should be elected in accordance with the system of proportional representation by means of the single transferable vote. He does not mention that the Prime Minister will be the head of this Cabinet. These are his three main objections to this article. I do not agree with the amendment of my honourable Friend Mr. Mahboob Ali Baig. *(Hear, hear)*. The first point is that he wants the number of Ministers to be fixed

in the Constitution. How can we fix the number? He wants fifteen Ministers. Suppose we require only ten, what are we to do with the other five? Suppose we require twenty, we cannot appoint them. Therefore, I say, Sir, that it is absurd to fix the number of Ministers in the Consitution. There is no Constitution in the whole world which fixes the number of Ministers. It is for the Parliament, it is for the Cabinet itself to find out how many Ministers are required for the work.

As regards proportional representation, Sir, what would be the result? Article 61 contemplates that after the general election, the party which is in a majority will elect its leader and that leader will be called upon by the President or the Governor-General, whoever he may be, to form the Ministry. He will be called the Chief Minister or the Prime Minister and he will submit the names to the President. If you have, Sir, election by means of the single transferable vote and proportional representation, a man may be elected who does not see eye to eye with the majority party. What will happen then? Every country wants a smooth working of the Constitution, (*Interruption*) in day to day working. I submit that it would be absurd. Then, you must have Coalition Government every time whether a particular party is in the majority or not.

In England you had a Coalition Ministry. Because at one time when the Labour Party came to power they had not an absolute majority on account of the existence of other parties—the Liberals and Conservatives—and they formed Coalition Ministry for the purposes of the First Great War and the Second Great World War. But to have Coalition Ministry everyday is absurd. Therefore I oppose this. The next amendment is of Prof. Shah who does not want that the Prime Minister should be the Head. Everywhere Prime Ministers are the Head. So I oppose this. The Article says—

"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."

My friend says the Prime Minster shall not be at the Head. I don't agree, Sir. In England the Prime Minister is the Head. This is the English system and it has been working satisfactorily for a number of years. My friend says that there is no mention of it in their Constitution but I submit that they never had a Constituent Assembly. The Constitution evolved itself. They did not have a Prime Minister in those days. It gradually grew and they found that the office of the Prime Minister at the head of the Cabinet was absolutely essential and they have got him now and it is working quite satisfactorily and it is right to have it under our Constitution also. Therefore I oppose that amendment also.

Now I come to No. 1297 by Mr. Tahir. Sir, the article says that the Council of Ministers will advise the President. The amendment says:

"Except in so far as he is by or under this Constitution required to exercise his functions or any of them in his discretion."

Sir, I do not accept this.

Kazi Syed Karimuddin (C. P. and Berar : Muslim): Is he replying on behalf of Dr. Ambedkar?

Mr. Tajamul Husain : Sir, I am not replying on behalf of Dr. Ambedkar or anybody else. I am speaking what actually I feel should be done. I have supported many amendments moved by Dr. Ambedkar and I have opposed many amendments moved by him. My friend Mr. Karimuddin never opposed any amendment of Dr. Ambedkar, but I did. So it does not mean that I am supporting Dr. Ambedkar. I do not know which amendment Dr. Ambedkar is

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going to accept. If my friend Mr. Karimuddin knows before hand what is going to be accepted by Dr. Ambedkar, then he must be in the confidence of Dr. Ambedkar.

Mr. Vice-President : Order, order. Mr. Tajamul Husain, if I were there, I would not mind this kind of interruption. You go on with your speech and do not mind the observations of your friends.

Mr. Tajamul Husain : I will go on with my speech; but sometimes one has to reply to baseless allegations. I am sorry I am taking more time of the House that I ought to have. Now I come to No. 1297 by Mr. Tahir. He wants that when the President wants to exercise his individual discretion, then the Cabinet shall not give him advice. Sir, I oppose this one also. We do not want the President or the Governor to use his individual discretion at all. In those days when the British were here they wanted to safeguard their own interest under the Government of India Act, 1935. That was absolutely necessary under that Act to check the Congress Ministries in their opinion, but now every thing has changed. His Majesty the King of England does not exercise his individual discretion at all. He merely follows the advice tendered by the Cabinet. If he does not accept the advice, he must go and not the Cabinet. Ultimately he will have to go. Therefore we have been mostly following the British Constitution which has worked so well—and I am also an admirer of the British Constitution—I think that there should be no question of individual discretion at all. If advice is tendered by the Cabinet, the President must accept that. Now, amendment No. 1298.

Mr. Vice-President : That will be blocked if 1297 is rejected and so you need not touch upon it.

Mr. Tajamul Husain : I now come to Prof. Shah's amendment. His first amendment is that every time the Minister or the Prime Minister is appointed or elected as the case may be, he should seek a vote of confidence from the House. This is a novel procedure. I have not heard anywhere that such procedure is being adopted. A new man has come; you must give him a trial. If you find after a time that he is not working to your liking, remove him. But why, every time the Prime Minister is appointed, should he be brought before the House and ask for a vote of confidence? This should not be accepted. His amendment No. 2 is that every minister must be an elected member of either House and if he is not, he should seek election within six months. I accept this amendment. *(Interruption).*

Yesterday I used the words "I support my own amendment". There was a fling at me. Now I used the word 'I accept this amendment'. Because we all are one.

Even now in the Provincial Legislatures a nominated member of the Upper House may be appointed as Minister. We do not want that. We want him to be elected. This is reasonable.

The third amendment is that not less than two-thirds of the members of the Council of Ministers shall at any time be members of the House of the People and not more than one-third of the Council of Ministers shall at any time be members of the Council of States. I am not prepared to agree to this. I do not accept it and I do not support it; I oppose it. Supposing the majority party in the House of the People—we shall call it the Conservative Party, the Congress must go and the Congress will go and there will be Labour, Conservative and some other parties on economic basis—supposing there is a Conservative party in Lower House which is in majority and is asked to form the Ministry and the Leader of the Party is asked to form a Ministry by the President. This amendment says he must get one-third at least from the

Council of States. Supposing in the Upper Chamber you have not got one-third of that party, what will happen. That will mean having people who are not of the same view. That is also objectionable.

There should be no limit to the number. Let there be Ministers from the Lower House or from the Upper House, it does not matter. But they must all be of one party.

The next point is that Parliament may appoint Deputy Ministers and Parliamentary secretaries. That, I suppose, will be done and there is no objection to that, and I support that amendment.

Lastly, there is the statement that no one should be appointed if he is found guilty by a competent court of moral turpitude or any other offences, etc., etc., and I think that this provision is good and so I support him there.

Sir, with these words, I resume my seat.

The Honourable Shri K. Santhanam : Mr. Vice-President, Sir, the House should be a little careful in interpreting articles 61, 62, 63 and 64. They should not be interpreted literally, because they embody conventions of the cabinet system of government evolved in Great Britain as a result of a long struggle between the King and Parliament. At every stage of this struggle the King yielded some power, but was anxious to preserve his prestige. Therefore, at the end of the struggle, the King gave up all his power, but preserved all his forms. Therefore, it is said here that 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. That does not mean that normally, the function of the Prime Minister is to aid or advise the President in the exercise of his functions. In fact, the position is altogether opposite, or the reverse. It is the Prime Minister's business with the support of the Council of Ministers, to rule the country and the President may be permitted now and then, to aid and advise the Council of Ministers. Therefore, we should look at the substance and not at the mere phraseology, which is the result of conventions. Of course, it may be asked why we should adopt these conventions, and why we should not put them into precise legal language. It might have been desirable to do so, but I do admit that it would not be easy, because the Prime Minister and the Council of Ministers are entities depending upon the confidence of the House which may vary from day to day, and at any moment it may cease to have confidence in them. Therefore, to embody the position of the Prime Minister and the Council of Ministers in the Constitution may bring about a degree of rigidity which maybe inconsistent with the elasticity of the cabinet system of government. The greatest advantage of the British type is its elasticity. So long as the Prime Minister and the Council of Ministers have got the confidence of the House, they are absolutely sovereign and they can do anything, but the day they lose that confidence, they become weaker and weaker and no one can say what their position will be at any particular moment. It is to embody this fluid position that we have had to adopt the words of the British convention. Therefore, there is no use interpreting them literally and then finding fault with them. Take for instance, clause (2) "The question whether any, and if so what, advice was tendered by Ministers to the President shall not be inquired into in any court."

Now, my friend Prof. K. T. Shah has an amendment to this effect that there should be an exception, and that these matters can be enquired into, when there is an impeachment, by the High Court of Parliament. First of all, to speak of the High Court of Parliament is to obscure the language of the Constitution, because Parliament is something different, it is not a court at all. Normally no advice is tendered by the ministers to the President at all. They simply pass orders. They come to decisions and they execute the decisions. Therefore,

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there can be no question of impeachment of a President for any advice given by the Prime Minister or the Council of Ministers. Therefore there is no question of taking that advice into consideration in matters of impeachment.

Now, Sir, I wish to say one or two words regarding the amendments which have been moved. I do not think it is right to suggest that Mr. Baig's amendment is based on any communal or other calculations. It is one of the recognised systems of government. The Swiss system, for instance, believes in an elected executive. It is something between the American executive and the Parliamentary executive. Therefore, though there is no presidential system, there is a sort of stable executive. In certain circumstances, that system may be advantageous. But for a country like India which is very big and which has very wide and diverse interests and the Parliament of which may consist of violently opposed elements, it cannot be a suitable system. It is on that ground and not on any *mala-fide* motives that it should be rejected.

Sir, Prof. K. T. Shah has been fighting such a lonely battle that I hardly like to criticise him. But he has taken upon himself too much of a task and that too quite unnecessarily. If he had concentrated on specific points, he might have carried greater weight. As it is, he has allowed himself to table such long amendments which I believe he has not been able to scrutinise himself. Take for instance amendment No. 1300 (2C). He says:

> "No one who is not an elected member of either House of Parliament shall be appointed minister unless he gets elected to one or the other House of Parliament within six months of the date of his appointment."

Now, when is the minister to be appointed? When does the period of six months begin? Before he is appointed, he must be elected, and before he is elected, six months may pass. So it is an obvious absurdity. Apparently, he has not had time to look into it. When he tables many amendments on matters which should be the result of careful consideration of committees, naturally he lets himself down. Whenever we are considering a complicated constitution of this type, individual members will have to content themselves with pointing out particular points and stressing particular amendments, instead of trying to re-draft the entire constitution. It is merely taking up the time of the House without adding to its knowledge and I humbly make the suggestion to Prof. K. T. Shah to concentrate on points where it will be practicable to improve the Constitution without trying to put forward an alternative constitution.

Thank you, Sir.

Mr. Vice-President : Dr. Ambedkar.

Shri Lakshminarayan Sahu (Orissa : General): Sir, this is a very important article on which I would like to .....

Mr. Vice-President : I know there are many Members who would like to speak on this article, but the time at the disposal of the House is extremely limited and I also feel that it has been sufficiently debated on.

Shri Lakshminarayan Sahu : But, Sir.....

Mr. Vice-President : Kindly do not try to over-rule the Chair. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I am sorry I cannot accept any of the amendments which have been tabled, either by Mr. Baig or Mr. Tahir or Prof. K. T. Shah. In reply to the points that they have made in support of the amendments they have moved, I would like to state my position as briefly as I can.

Mr. Mahboob Ali Baig's amendment falls into two parts. The first part of his amendment seeks to fix the number of the Cabinet Ministers. According

to him they should be fifteen. The second part of his proposition is that the Member of the Cabinet must not be appointed by the Prime Minister or the President on the advice of the Prime Minister but should be chosen by the House by proportional representation.

Now, Sir, the first part of his amendment is obviously impracticable. It is not possible at the very outset to set out a fixed number for the Cabinet. It may be that the Prime Minister may find it possible to carry on the administration of the country with a much less number than fifteen. There is no reason why the Constitution should burden him with fifteen Ministers when he does not want as many as are fixed by the Constitution. It may be that the business of the Government may grow so enormously big that fifteen may be too small a number. There may be the necessity of appointing more members than fifteen. There again it will be wrong on the part of the Constitution to limit the number of Ministers and to prevent him from appointing such number as the requirements of the case may call upon to do so.

With regard to the second amendment, namely, that the Ministers should not be appointed by the President on the advice of the Prime Minister, but should be chosen by proportional representation. I have not been able to understand exactly what is the underlying purpose he has in mind. So far I was able to follow his arguments, he said the method prescribed in the Draft Constitution was undemocratic. Well, I do not understand why it is undemocratic to permit a Prime Minister, who is chosen by the people, to appoint Ministers from a House which is also chosen on adult suffrage, or by people who are chosen on the basis of adult suffrage, I fail to understand why that system is undemocratic. But I suspect that the purpose underlying his amendment is to enable minorities to secure representation in the Cabinet. Now if that is so. I sympathise with the object he has in view, because I realise that a great deal of good administration, so to say, depends upon the fact as to in whose hands the administration vests. If it is controlled by a certain group, there is no doubt about it that the administration will function in the interests of the group represented by that particular body of people in control of administration. Therefore, there is nothing wrong in proposing that the method of choosing the Cabinet should be such that it should permit members of the minority communities to be included in the Cabinet. I do not think that that aim is either unworthy or there is something in it to be ashamed of. But I would like to draw the attention of my friend, Mr. Mahboob Ali Baig, that his purpose would be achieved by an addition which the Drafting Committee proposes to make of a schedule which is called Schedule 3-A. It will be seen that we have in the Draft Constitution introduced one schedule called Schedule 4 which contains the Instrument of Instructions to the Governor as to how he has to exercise his discretionary powers in the matter of administration. We have analogous to that, decided to move an amendment in order to introduce another schedule which also contains a similar Instrument of Instructions to the President. One of the clauses in the proposed Instrument of Instructions will be this:

> "In making appointment to his Council of Ministers, the President shall use his best endeavours to select his Ministers in the following manner, that is to say, to appoint a person who has been found by him to be most likely to command a stable majority in Parliament as the Prime Minister, and then to appoint on the advice of the Prime Minister those persons, including so far as practicable, members of minority communities, who will best be in a position collectively to command the confidence of Parliament."

I think this Instrument of Instructions will serve the purpose, if that is the purpose which Mr. Mahboob Ali Baigh as in his mind in moving his amendment. I do not think it is possible to make any statutory provision for the inclusion of members of particular communities in the Cabinet. That, I think, would not be possible, in view of the fact that our Constitution, as proposed, contains the principle of collective responsibility and there is no

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use foisting upon the Prime Minister a colleague simply because he happens to be the member of a particular minority community, but who does not agree with the fundamentals of the policy which the Prime Minister and his party have committed themselves to.

Coming to the amendment of my friend, Mr. Tahir, he wants to lay down that the President shall not be bound to accept the advice of the Ministers where he has discretionary functions to perform. It seems to me that Mr. Tahir has merely bodily copied Section 50 of the Government of India Act before it was adopted. Now, the provision contained in Section 50 of the Government of India Act as it originally stood was perfectly legitimate, because under that Act the Governor-General was by law and statute invested with certain discretionary functions, which are laid down in Sections 11, 12, 19 and several other parts of the Constitution. Here, so far as the Governor-General is concerned, he has no discretionary functions at all. Therefore, there is no case which can arise where the President would be called upon to discharge his functions without the advice of the Prime Minister or his cabinet. From that point of view the amendment is quite unnecessary. Mr. Tahir has failed to realise that all that the President will have under the new Constitution will be certain prerogatives but not functions and there is a vast deal of difference between prerogatives and functions as such.

Under a Parliamentary system of Government, there are only two prerogatives which the King or the Head of the State may exercise. One is the appointment of the Prime Minister and the other is the dissolution of Parliament. With regard to the Prime Minister it is not possible to avoid vesting the discretion in the President. The only other way by which we could provide for the appointment of the Prime Minister without vesting the authority or the discretion in the President, is to require that it is the House which shall in the first instance choose its leader, and then on the choice being made by a motion or a resolution, the President should proceed to appoint the Prime Minister.

Mr. Mohd. Tahir : On a point of order, how will it explain the position of the Governors and the Ministers of the State where discretionary powers have been allowed to be used by the Governors?

The Honourable Dr. B. R. Ambedkar : The position of the Governor is exactly the same as the position of the President, and I think I need not over-elaborate that at the present moment because we will consider the whole position when we deal with the State Legislatures and the Governors. Therefore, in regard to the Prime Minister, the other thing is to allow the House to select the leader, but it seems that that is quite unnecessary. Supposing the Prime Minister made the choice of a wrong person either because he had not what is required, namely, a stable majority in the House, or because he was a *persona non-grata* with the House: the remedy lies with the House itself, because the moment the Prime Minister is appointed by the President, it would be possible for the House or any Member of the House, or a party which is opposed to the appointment of that particular individual, to table a motion of no-confidence in him and get rid of him altogether if that is the wish of the House. Therefore, one way is as good as the other and it is therefore felt desirable to leave this matter in the discretion of the President.

With regard to the dissolution of the House there again there is not any definite opinion so far as the British constitutional lawyers are concerned. There is a view held that the President, or the King, must accept the advice of the Prime Minister for a dissolution if he finds that the House has become recalcitrant or that the House does not represent the wishes of the people. There is also the other view that notwithstanding the advice of the Prime

Minister and his Cabinet, the President, if he thinks that the House has ceased to represent the wishes of the people, can *suo moto* and of his own accord dissolve the House.

I think these are purely prerogatives and they do not come within the administration of the country and as such no such provision as Mr. Tahir has suggested in his amendment is necessary to govern the exercise of the prerogatives.

Now, Sir, I come to the amendments of Prof. K. T. Shah. It is rather difficult for me to go through his long amendments and to extract what is really the *summum bonum* of each of these longish paragraphs. I have gone through them and I find that Prof. K. T. Shah wants to propose four things. One is that he does not want the Prime Minister, at any rate by statute. Secondly, he wants that every Minister on his appointment as Minister should come forward and seek a vote of confidence of the Legislature. His third proposition is that a person who is appointed as a Minister, if he does not happen to be an elected Member of the House at the time of his appointment, must seek election and be a Member within six months. His fourth proposition is that no person who has been convicted of bribery and corruption and so on and so forth shall be appointed as a Minister.

Now, Sir, I shall take each of these propositions separately. First, with regard to the Prime Minister, I have not been able to understand why, for instance, Prof. K. T. Shah thinks that the Prime Minister ought to be eliminated. If I understood him correctly, he thought that he had no objection if by convention a Prime Minister was retained as part of the executive. Well, if that is so, if Prof. K. T. Shah has no objection for convention to create a Prime Minister, I should have thought there was hardly any objection to giving statutory recognition to the position of the Prime Minister.

In England, too, as most students of constitutional law will remember, the Prime Minister was an office which was recognised only by convention. It is only in the latter stages when the Act to regulate the salaries of the Minister of Cabinet was enacted. I believe in 1939 or so, that a statutory recognition was given to the position of the Prime Minister. Nonetheless, the Prime Minister existed.

I want to tell my friend Prof. K. T. Shah that his amendment would be absolutely fatal to the other principle which we want to enact, namely collective responsibility. All Members of the House are very keen that the Cabinet should work on the basis of collective responsibility and all agree that is a very sound principle. But I do not know how many Members of the House realise what exactly is the machinery by which collective responsibility is enforced. Obviously, there cannot be a statutory remedy. Supposing a Minister differed from other Members of the Cabinet and gave expression to his views which were opposed to the views of the Cabinet, it would be hardly possible for the law to come in and to prosecute him for having committed a breach of what might be called collective responsibility. Obviously, there cannot be a legal sanction for collective responsibility. The only sanction through which collective responsibility can be enforced is through the Prime Minister. In my judgment collective responsibility is enforced by the enforcement of two principles. One principle is that no person shall be nominated to the Cabinet except on the advice of the Prime Minister. Secondly, no person shall be retained as a Member of the Cabinet if the Prime Minister says that he shall be dismissed. It is only when Members of the Cabinet both in the matter of their appointment as well as in the matter of their dismissal are placed under the Prime Minister, that it would be possible to realise our ideal of collective responsibility. I do not see any other means or any other way of giving effect to that principle.

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Supposing you have no Prime Minister; what would really happen? What would happen is this, that every Minister will be subject to the control or influence of the President. It would be perfectly possible for the President who is not *ad idem* with a particular Cabinet, to deal with each Minister separately singly, influence them and thereby cause disruption in the Cabinet. Such a thing is not impossible to imagine. Before collective responsibility was introduced in the British Parliament you remember how the English King used to disrupt the British Cabinet. He had what was called a Party of King's Friends both in the Cabinet as well as in Parliament. That sort of thing was put a stop to by collective responsibility. As I said, collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, the Prime Minister is really the keystone of the arch of the Cabinet and unless and until we create that office and endow that office with statutory authority to nominate and dismiss Ministers there can be no collective responsibility.

Now, Sir, with regard to the second proposition of my friend Prof. K. T. Shah that a Minister on appointment should seek a vote of confidence. I am sure that Prof. K. T. Shah will realise that there is no necessity for any such provision at all. It is true that in the early history of the British Cabinet every person who, notwithstanding the fact that he was a Member of Parliament, if he was appointed a Minister, was required to resign his seat in Parliament and to seek re-election because it was felt that a person if he is appointed a Minister will likely to be under the influence of the Crown and do things in a manner not justified by public interest. The British themselves have now given up that system; by a statute they abrogated that rule and no person or Member of Parliament who is appointed a Minister is now required to seek re-election. That provision, therefore, is quite unnecessary. As I explained a little while ago, if the Prime Minister does happen to appoint a Minister who is not worthy of the post, it would be perfectly possible for the Legislature to table a motion of no-confidence either in that particular Minister or in the whole Ministry and thereby get rid of the Prime Minister or of the Minister if the Prime Minister is not prepared to dismiss him on the call of the legislature. Therefore, my submission is that the second proposition of Prof. K. T. Shah is also unnecessary.

With regard to his third proposition, *viz.,* that if a person who is appointed a member of the Cabinet is not a Member of the Legislature, he must become a member of the legislature within six months, I may point out that this has been provided for in article 62 (5). This amendment is therefore unnecessary.

His last proposition is that no person who is convicted may be appointed a Minister of the State. Well, so far as his intention is concerned, it is no doubt very laudable and I do not think any Member of this House would like to differ from him on that proposition. But the whole question is this whether we should introduce all these qualifications and disqualifications in the Constitution itself. Is it not desirable, is it not sufficient that we should trust the Prime Minister, the Legislature and the public at large watching the actions of the Ministers and the actions of the Legislature to see that no such infamous thing is done by either of them? I think this is a case which may eminently be left to the good-sense of the Prime Minister and to the good sense of the Legislature with the general public holding a watching brief upon them. I therefore say that these amendments are unnecessary.

Shri H. V. Kamath : I am afraid Dr. Ambedkar has lost sight of amendment No. 47 in List IV of the Fifth Week.

Mr. Vice-President : He is not bound to reply to everything. The reply to that amendment has been given by Mr. Tajamul Husain.

The Honourable Dr. B. R. Ambedkar : That does not require any reply. All that has to be left to the Prime Minister.

Mr. Vice-President : I will now put the amendments, one by one, to vote.

The question is:

"That for the existing clause (1) of article 61, the following be substituted:

'1(a) There shall be a Council of Ministers to aid and advise the President in the exercise of his functions,

(b) The Council shall consist of fifteen ministers selected by the elected members of both the Houses of Parliament from among themselves in accordance with the system of proportional representation by means of the single transferable vote, and one of the ministers, shall be elected as Prime Minister in like manner.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 61, the words 'with the Prime Minister at the head' be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That at the end of clause (1) of article 61 the following be inserted:

'Except in so far as he is by or under the Constitution required to exercise his functions or any of them in his discretion.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 1298 of Mr. Mohd. Tahir is blocked by the rejection of amendment No. 1297, I am not therefore putting it to vote.

I shall now put to the vote of the House amendment No.1299 of Prof. K. T. Shah. The question is:

"That at the end of clause (2) of article 61, the words 'except by the High Court of Parliament when trying a President under section 50' be inserted."

The amendment was negatived.

Mr. Vice-President : I will now put amendment No. 1300 of Prof. Shah as amended by amendment No. 47 of List IV of the Fifth Week to vote.

The question is:

"That after clause (2) of article 61, the following new clauses be inserted:—

'(2A) On every change in the Council of Ministers, and particularly on every change of the holder of Prime-Ministership, the Prime Minister (alternatively, the President) shall present the new minister as the case may be to the People's House of Parliament, and shall ask for a vote of confidence from that body in the particular minister newly appointed. In the event of an adverse vote in the case of a particular minister, the minister concerned shall forthwith cease to hold office and a new minister appointed. If a vote of confidence in the Council of Ministers collectively is refused, the Council as a whole shall resign and a new Ministry formed in its place.

(2B) Every minister shall, at the time of his appointment, be either an elected member of one or the other House of Parliament or shall seek election and be elected member of one or the other House within not more than six months from the date of his appointment, provided that no one elected at the time of a General Election, and appointed minister within less than six months of the date of the General Election, shall be liable to seek election.

(2C) No one who is not an elected member of either House of Parliament shall be appointed minister unless he get elected to one or the other House of Parliament within six months of the date of his appointment.

(2D) Not less than two-thirds of the members of the Council of Ministers shall at any time be members of the People's House of Parliament; and not more than one-third of the members of the Council of Ministers shall at any time be members of the Council of States. Members of the Council of Ministers may have such assistance in the shape of Deputy Ministers of Parliamentary Secretaries as

[Mr. Vice-President]

Parliament may by law from time to time determine, provided that no one shall be appointed Deputy Minister or Parliamentary Secretary who at the time of his appointment was not an elected member of either House of Parliament, or who is not elected within six months of the date of his appointment to a seat in one or the other House of Parliament.

(2E) No one shall be appointed Minister or Deputy Minister or Parliamentary Secretary, who has been convicted of treason, or of any offence against the sovereignty, security, or integrity of the State, or of any offence involving moral turpitude and of bribery and corruption and liable to a maximum punishment of two years' rigorous punishment.

Every minister shall, before entering upon the functions of the office, declare all his right, interest or title in or to any property, business, industry, trade or profession, and shall divest himself of the same either by selling all or any such right, interest, or title in or to any property, business, industry, trade or profession in open market or to Government at the market price; and further, shall take an oath ever to consider exclusively the interests of the country and not seek to promote his own interest or aggrandizement of his family in any act he may do or appointment he may have to make.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 46 of List IV is blocked. Mr. Kamath will understand why I am not putting it to vote. It is blocked by the rejection of amendment No. 1300 as amended.

Now I will put article 61 to the vote of the House.

The question is:

"That article 61 stand part of the Constitution."

The motion was adopted.

Article 61 was added to the Constitution.

Article 62

Mr. Vice-President : The House will take up for consideration article 62. The motion is:

"That article 62 form part of the Constitution."

Mr. Mahboob Ali Baig may move amendment No. 1302. No, I see that it is blocked by the decision in regard to the previous article.

Mahboob Ali Baig Sahib Bahadur : Yes, Sir. That is so.

Mr. Vice-President : Amendment No. 1303 standing in the name of Kazi Syed Karimuddin may now be moved.

I should tell the Mover that parts (1) and (2) are blocked. He may move part (3) only.

Shri T. T. Krishnamachari : May I point out that if parts (1) and (2) of this amendment are blocked as result of the rejection of a previous amendment, the rest of the amendment cannot be moved?

Mr. Vice-President : Part (3) of the amendment may be moved. It deals with the removal of a Member of the Cabinet.

Kazi Syed Karimuddin : Sir, in view of the ruling given by you that sub-clauses (1) and (2) of my amendment are barred, it has really become difficult for me to make a speech on parts (3) and (3A).

The Honourable Shri K. Santhanam : Is it not barred by the rejection of an earlier amendment? Unless the Ministers are elected, this will not follow at all. The thing is meaningless as it is.

Kazi Syed Karimuddin : It is not meaningless.

Mr. Vice-President : Kindly let Mr. Santhanam speak.

The Honourable Shri K. Santhanam : Part (3) is consequential upon part (2). Only if (2) is accepted, part (3) can be considered. It will have no meaning otherwise. It is only if Ministers are to be elected this will arise. Here the Ministers are merely appointed by the President. Then the amendment will make them irremovable. His point is that if they are elected they should not be removed.

Kazi Syed Karimuddin : My amendment is regarding the removal of Ministers.

Shri T. T. Krishnamachari : May I point out, Sir, that if sub-clause (2) of article 62 remains and is not being omitted, part (3) of amendment No. 1303 cannot be moved. Sub-clause (2) of article 62 says: "Ministers shall hold office....., etc." If that remains, part (3) of the honourable Member's amendment, cannot have any place in it.

Mr. Vice-President : Mr. Karimuddin wants a special provision for the removal of Members of the Cabinet. Is that not so?

Kazi Syed Karimuddin : Yes.

Mr. Vice-President : Mr. Krishnamachari's contention is that this is barred. Why?

Shri T. T. Krishnamachari : If the Honourable Member wants to achieve his object, sub-clause (2) has to be omitted first. If parts (1) and (2) of his amendment are not moved, the third part would not fit in at all.

Kazi Syed Karimuddin : Parts (1) and (2) have nothing to do with part (3) of my amendment.

Mr. Vice-President : This may be interpreted as a substitute for (2) and (3). At any rate I allow him to make his point.

Kazi Syed Karimuddin : Mr. Vice-President, Sir, I move amendment for the inclusion of sub-clause of (3) and (3A):

"(3) A member of the Cabinet shall not be liable to be removed except on impeachment by the House on the ground of corruption or treason or contravention of laws of the country or deliberate adoption of policy detrimental to the interests of the State.

(3A) The procedure for such impeachment will be the same as provided in article 50."

Sir, my submission is that at present the executive machinery of the Government in the country is deteriorating very fast because the legislators and all those who belong to the majority parties in the assemblies exercise very great influence on the Ministers. If the Ministers do not listen to the legislators and their supporters, the result is that they are likely to be removed. Under these circumstances it is clear that even the Congress High Command have felt that a procedure should be evolved by which the Ministers should not be compelled to accede to the requests of the legislators and their supporters. In C.P. the Honourable Pandit Misra has issued clear instructions that government servants should not allow any interference by Congressmen and their supporters. This means that in this country the executive is being influenced by those who are supporters of the party. Until the Ministers feel secure in their seats, it is possible that there will be interference in the day to day administration of the country. Therefore my submission is that, in order to have a stable and a formidable government, which would not be influenced by the People in the street or by their supporters, it is very necessary that it should not be removable by the House. I have laid down in (3) "except on

[Kazi Syed Karimuddin]

impeachment on the ground of corruption or treason or contravention of the laws of the country or deliberate adoption of policy detrimental to the interests of the State," they shall not be removed.

Shri Mahavir Tyagi : What about a no-confidence motion? Can it be moved or not?

Kazi Syed Karimuddin : No.

(Amendments Nos. 1304, 1305, 1306, 1307 and 1308 were not moved.)

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (1) of article 62, before the words 'and the other ministers' the words 'from the members of the party commanding a majority of votes in the People's House of Parliament' be inserted."

The amended clause would read:

"The Prime Minister shall be appointed by the President from among the Party commanding a majority of votes in the Peoples' House of Parliament, and the other Ministers etc."

Sir, this is just to clarify the idea that the Ministry is not only collectively responsible to the legislature, but also that it is homogeneously selected and that therefore it is guaranteed the confidence of the House. That is, I think, necessary to clarify in the Constitution itself in order to secure that the Ministry is not only stable, but is commanding the confidence of the House. Those who accept the principle of collective responsibility of the Ministry to the chosen representatives of the people, should not find any fault with this suggestion as it is only clarifying what is no doubt the intention of the whole clause, and in fact of the whole Constitution.

I realise that I making myself somewhat unpopular with those who do not like the number or nature of the amendments that I have put forward, or are unable to follow in the multiplicity of the clauses that I have suggested the essence of those clauses. I very much regret that I cannot help doing so, because I do not judge that my function is merely to get anything accepted by those who will not accept. None so blind as will not see, nor none so deaf as will not hear. My function, Sir, is not to get those amendments successfully through. My function is, I hold, to place my view on each point before the House; and it is for the House as a whole to accept or reject after hearing my arguments. Prophets are never honoured in their own time. I do not look upon the task that I have assigned to myself as merely to get my views successfully adopted. I am deeply grateful to my friend Mr. Santhanam, who was pleased to commisserate with me on that heavy burden I have placed on myself which he considers unnecessary. But, I repeat, Sir, I do not view my work here merely in the light of the successful acceptance of the proposals that I have been putting forward in the House. I have, under the procedure of this House to propose, not an alternative Constitution, but only amendments to each particular clause as it comes up. Accordingly, without going out of the rules, it would be impossible for me to convey to the House the ideas that I have before me. It may be very well for those who once stood for the separation of powers between the executive, the legislature and the judiciary, to change places, to think different about it now that they may have changed their chair. I have no objection to that. But, for my part, I have never believed in the doctrine that consistency is not a virtue in politics. Consistency may not be a virtue among politicians. Unfortunately, not being able to accept that doctrine, I continue to present my ideas to the House regardless altogether of the fate with which the House might accept them. Every time I have attempted to put forward particular principles, the House is unwilling to see

eye to eye with me; but I assure you that unless I am barred altogether by a specific motion of the House that all amendments tabled by me shall be rejected even before they are moved. I will present every one of my amendments, speak on them, and abide by whatever fate they may have in the House.

Mr. Vice-President : The House stands adjourned till 10 A.M. tomorrow.

The Constituent Assembly then adjourned till Ten of the Clock on Friday, the 31st December 1948.

CONSTITUENT ASSEMBLY OF INDIA

Friday, the 31*st December* 1948.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—(*contd.*)

Article 62—(*contd.*)

Mr. Vice-President : (Dr. H. C. Mookherjee): We shall now resume discussion of article 62.

(Amendments Nos. 1310 and 1311 were not moved.)

Nos. 1312 and 1329 are of similar import. No. 1329 may be moved. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : (Bombay : General): Sir, I move:

"That after clause (5) of article 62, the following new clause be inserted:—

'(5) (a) In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall be generally guided by the instructions set out in Schedule III-A, but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.' "

Mr. Vice-President : There is an amendment to this amendment, *viz.*, No. 50 of List IV in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1329 of the List of Amendments, in the proposed new clause 5(a) all the words commencing with 'but the validity' to the end be deleted."

Sir, the amendment which has just been moved by the honourable Member Dr. Ambedkar introduces a new clause (5) (a) to article 62. It provides that the President in choosing his Ministers as well as "in the exercise of other functions" under the Constitution, would be generally guided by the Instrument of Instructions. With regard to this part of the clause I have no quarrel. But the last few lines which I have sought to omit seem to be open to serious objection. At least they require clarification. The words which I want to delete are the following—"but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions."

I submit, Sir, that these words imply a serious encroachment on the Constitution. The earlier part of the clause affects also "other functions" under the Constitution. These words are all-embracing. In fact, the "other functions" under the Constitution mean all sorts of functions. The choice of Ministers should be a matter which should not be open to question at all. But the validity of any other functions, I submit, should not be immune from question. In fact, under the Constitution, the President would be a constitutional President. He would be acting on the advice of Ministers. So in the exercise of his other functions under the Constitution, he would be acting on the advice

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of his Ministers. The effect of the words which I seek to delete would be that it would give the President absolute and autocratic power in the exercise of his "other functions" under the Constitution. That is too much to concede. The real effect of the President being a constitutional President would be that the Ministry or a Minister may advise the President to do anything which is not constitutional, and the effect of the words which I seek to delete would be that a clearly unconstitutional act, or which may amount even to a deliberate, open violation of the Constitution would not be open to question. The new clause says that such an act of the President "shall not be called in question". The prohibition is absolute. It cannot be called into question in any place, in any manner. It would not be open to question in a Court of law, in the legislature or anywhere else. I do not know whether any criticism in a newspaper questioning the legality or even the propriety of an act of the President would be prohibited under this clause. But the plain meaning of these words would be at any rate to shut out any discussion of it in the Legislature or in a Court of law where an unconstitutional act should be effectively challenged. I submit, Sir, that these words are too wide to be accepted. I do not suggest or believe that they were introduced to cover and protect a deliberately perpetrated unconstitutional act. I do not believe it. But the effect of these words would nevertheless be this. They would cover or protect from question in any way any act done by a Minister or by a Ministry through the President and a Minister will thereby secure a kind of protection which he should not enjoy. A Minister will be enabled to use the President as an effective shield to support an unconstitutional act. The sanctity of the Constitution would thus be seriously impaired, its authority seriously undermined, if a perfectly unconstitutional act is shut out from any kind of discussion or question, under the latter part of this clause. I submit, Sir, this is a very serious encroachment on the rights of the citizens so eloquently guaranteed with so much flourish in the Constitution. These rights would be absolutely nullified if a President can be coaxed, persuaded, on the advice of a Minister to act in an unconstitutional manner. I submit that this is an effect which is undesirable and, perhaps, not intended. I, therefore, seek the elimination of even any possibility of any question as to the unconstitutionality of an act of the President being in any way shut out. At any rate I seek clarification. I think that the rights of the citizens should be protected from this sort of encroachment under the last few lines.

Mr. Vice-President : Amendment No. 1312. Mr. Mohd. Tahir and Saiyid Jafar Imam, do you want this amendment to be put to vote?

Saiyid Jafar Imam (Bihar : Muslim): Yes.

(Amendment No. 1313 was not moved.)

Mr. Vice-President : Amendments Nos. 1314, 1315, 1316, 1317, 1319 and 1320 are all of similar import. No. 1315 seems to be the most comprehensive and may be moved. It stands in the name of Shri Damodar Swarup Seth.

(Amendment No. 1315 was not moved.)

Amendment No. 1314, standing in the name of Shri Kesava Rao may be moved.

(Amendment No. 1315 was not moved.)

Amendment No. 1316, standing in the names of Mr. Mohamed Ismail and Mr. Pocker Sahib, may be moved.

B. Pocker Sahib Bahadur (Madras : Muslim): Sir, I beg to move:

"That for clause (2) of article 62, the following be substituted:—

'(2) The Ministers shall hold office so long as they enjoy the confidence of the House of the People.' "

Sir, I may at the outset say that this amendment has no communal character, and there is no political motive behind it. I have to make this statement in view of my past experience. What this amendment asks for is only to put in writing in the Constitution what is admitted to be the convention. No doubt, the convention prevails, that the Ministers shall hold office only so long as they enjoy the confidence of the House of the People. So long as the Ministers enjoy the confidence of the House of the People, certainly they will not be dismissed by the President. But as a matter of practice, it is not a fact to say that the Ministers hold office during the pleasure of the President. It is really a fiction to say that the Ministers hold office during the pleasure of the President. It is not so, as a matter of fact. No doubt, the convention prevails in Great Britain and some other countries. But when we are providing for the country a written Constitution, I do not see any reason why we should hang on to the conventions that obtain in other parts of the world. Even when we have got an opportunity to put down everything clearly in the Constitution, should we be left to quote the precedents of the United Kingdom or the United States? There is absolutely no harm in putting on paper, in the Constitution, the actual state of affairs, namely, that the ministers shall hold office so long as they enjoy the confidence of the people. I am saying this in anticipation of the only possible objection to this amendment, *viz.,* that it is a convention that obtains in the rest of the world and therefore it is not necessary to put it down in writing in the Constitution. As a matter of fact, I feel myself at a disadvantage on account of the procedure that is being followed; under this procedure one is not in a position to know what the real objection to an amendment is until the Honourable Dr. Ambedkar gets up and states his objection. He has the last word on the subject. There is no opportunity for the Mover or any of the other members of the House to deal with the objections or tell the House whether the objections are valid or not. I am not in the least questioning the procedure. I simply state what the procedure followed is. Therefore I am driven to the necessity of anticipating what possible objection there can be to an innocent amendment like this.

From what was mentioned by the Honourable Shri K. Santhanam in connection with the discussion of article 61, I gather that this will be the possible objection, namely that this is a convention that obtains elsewhere and therefore it will be difficult to put it down on paper and it is also unnecessary. To this anticipated objection I submit that we should not continue to be slavish here after too, when we have obtained our freedom. No doubt until now we have been slavishly following the convention or procedure adopted in Great Britain and in other parts of the British Commonwealth. But, having obtained freedom to do what we feel to be for the best for our country, why should we not put down our ideas in the Constitution itself? I see no reason why we should again be hanging on even here after to precedents and conventions obtaining elsewhere and not put down what we desire to be the law in our Constitution? The conventions referred to in other countries are there because of the fact that they have unwritten Constitutions. At least so far as these aspects are concerned, why should we leave them in an unspecified manner to be fought out in the Supreme Court? There is no necessity for that when we have an opportunity to put these down in the Constitution now. Why cannot we state this clearly? Where is the harm or danger in doing so, I cannot understand.

Sir, as I said I have anticipated the possible objection to my amendment and I say that that is no objection at all. On the other hand, we must put down in writing clearly what the convention is.

Now, Sir, I also heartily support the amendment moved by my honourable Friend Mr. Naziruddin Ahmad for the deletion of the latter part of the amendment moved by the Honourable Dr. Ambedkar. Mr. Naziruddin's

[B. Pocker Sahib Bahadur]

amendment is to omit the words "but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions". Mr. Naziruddin Ahmad's amendment only seeks to delete what is attempted to be taken away from that which is given by the first part of the amendment of the Honourable Dr. Ambedkar. If the latter part of the amendment of Dr. Ambedkar is not there, it will mean something. Otherwise his amendment would only be a paper amendment and a pious wish without any substance in it and helpful to nobody. Therefore I heartily support the amendment of Mr. Naziruddin Ahmad.

Now, Sir, so far as my amendment is concerned, before resuming my seat, I would only mention this: that as I have already said, I am driven to the necessity of anticipating the possible objections to it and reply thereto. Another possible objection that I can think of to my amendment is, according to the experience I have gained in the discussion on other clauses, that the amendment, is communal. To that I say that this amendment is entirely non-communal and non-political and there is no other motive behind it. It affects only the constitutional aspect of the problem. Only it happens to be moved by a member who is a Muslim. I say this, Sir, because yesterday I was surprised to find that Dr. Ambedkar, in his reply to an amendment moved by Mr. K. T. M . Ahmed Shah pointed out to the House that it must be remembered that the amendments are moved and supported only by Muslims. I ask, Sir, whether an amendment or the reason behind it loses any force by the fact that the Mover is a Muslim or a Christian or a member of the Scheduled Castes or of other minority communities? I am very sorry to find that, while Dr. Ambedkar is doing very great service to the country in having undertaken this most difficult task at so much sacrifice of pushing through the Constitution, I never expected that he of all people would resort to such reasoning.

Mr. Vice-President : Please confine yourself to your amendment. You are going out of your way.

B. Pocker Sahib Bahadur : Sir, I do not want.....

Mr. Vice-President : Kindly carry out my suggestion.

B. Pocker Sahib Bahadur : I am carrying out your suggestion. I want to say I am only appealing to the House that, in considering the validity or the propriety of this amendment, the fact that the Mover is a Muslim should not be taken into consideration. Sir, I am entitled to say that in view of what has happened with reference to the other amendments moved by some Muslim members.....

Mr. Vice-President : You need not dilate upon it.

B. Pocker Sahib Bahadur : That is right, Sir. I entirely agree. I only wanted to make that point clear; that is all. I only wished to mention that the discussion in this House should be kept at a higher level than what it would be if such kind of reasoning is adopted for opposing amendments of members of minority communities.

Mr. Mohamed Ismail Sahib (Madras : Muslim): On a point of information, Sir, may I know whether, in view of the fact that the movers of amendments have not got the right to reply and particularly in view of the fact that certain serious statements have been made by some members and also personal reflections have been cast on members, they cannot reply to them when there is an opportunity of doing so; more particularly when they have a legitimate opportunity to reply to the reflections and unjustified and unwarranted statements that were made in the House. In all legislative proceedings, the mover of a serious amendment, a substantive amendment, has got the right to reply

at the end, but you have ruled, Sir, to the contrary, to which we submit. However, have we not got the right to reply to the statements made, when there is an opportunity and that too an opportunity which does not take the Member out of his way?

Mr. Vice-President: I certainly shall not hinder any member from replying to unjustifiable reflections. On that I am perfectly clear in my mind. At the same time I must use my powers in order to persuade members when they make such reply to use language which may not provoke irritation. It is this that was responsible for the request I made to Pocker Sahib. I think you will agree that this is the best way of proceeding with our work without unnecessary friction.

Mr. Mohamed Ismail Sahib : I quite appreciate and agree to the advice you have given, Sir, that members should not use any provocative language. That advice of yours, I hope, is addressed to all sections of the House.

Mr. Vice-President : Has the Chair ever been guilty of saying anything which is meant for one section of the House only? I do not think that has ever been the case.

Mr. Mohamed Ismail Sahib : That is what I wanted you to emphasise, Sir. This interruption of mine has been occasioned by certain provocative statements that have been made. They were quite unwarranted. Therefore, I am grateful to you for saying that this advice of yours is meant not to one section but to all sections of the House. I beg your pardon for interrupting.

Mr. Vice-President : Pocker Sahib, please continue.

B. Pocker Sahib Bahadur : Sir, I would respectfully follow your advice. I do not want to make either any provocative statements or to dilate more upon the topic. I have already mentioned what I wanted to mention, *viz.,* the fact that a particular member belongs to a particular community ought not to be a ground for stating that a particular argument has no value or should not hold water, as it proceeds from a member of a particular community. I say this particularly for the reason that it is the duty of each and every member of this House to keep the debate on a high level and we should never go down to a low level to which we will be driven if such statements are resorted to. I do not want to pursue this matter further. Sir, I move this amendment and leave it to the House to consider the same without any reference to the question that it is a Muslim who has moved it.

(Amendment No. 1317 was not moved.)

Mr. Vice-President : Amendment No. 1319. Prof. Shah, do you want it to be put to vote?

Prof. K. T. Shah (Bihar : General): Yes, Sir.

Mr. Vice-President : There is an amendment to this amendment. I allow that to be moved. No. 48 of List IV.

Mr. Naziruddin Ahmad : I desire that this also should be put to the vote.

Mr. Vice-President : Amendment No. 1320 standing in the names of Mr. Tahir and Mr. Jafar Imam. Do you want it to be put to vote?

Mr. Mohd. Tahir (Bihar : Muslim): Yes, Sir.

Mr. Vice-President : There is an amendment to this. No. 49 of List IV.

Mr. Naziruddin Ahmad : I desire that this also should be put to the vote.

(Amendment Nos. 1318 and 1321 were not moved.)

Mr. Vice-President : Amendment No. 1322 standing in the name of Mr. Mihir Lal Chattopadhyay.

Mr. Naziruddin Ahmad : On a point of order, Sir. This is a good amendment, but it is purely verbal.

Mr. Vice-President : It is a good amendment, though it is verbal. Therefore it is allowed.

Shri Mihir Lal Chattopadhyay (West Bengal : General) : Mr. Vice-President, Sir, I move:

"That in clause (3) of article 62, after the word 'Council', the words 'of Ministers' be inserted."

Obviously, this is a simple amendment but I consider it to be very necessary. The word 'Council' has been used in the body of the Draft Constitution in different places to express different meanings. It is desirable that in this clause nothing should be left vague and uncertain. It should be precise and definite. I hope Dr. Ambedkar and the House will have no difficulty in accepting this.

(Amendment Nos. 1323 and 1324 were not moved.)

Mr. Mohd. Tahir : Sir, I beg to move:

"That for clause (5) of article 62 the following be substituted:

'(5) A Minister shall at the time of his appointment as such, be a member of the Parliament.' "

Before I submit a few words regarding my amendment I would draw the attention of the House to the existing clause of the article. Clause (5) says:

"A Minister who for any period of six consecutive months is not a member of either House of Parliament shall at the expiration of that period cease to be a minister."

This shows that even if a person is not a member of the Parliament he can be appointed as a minister. In this connection I would submit that it is wholly against the spirit of democracy that a person who has not been chosen by the people of the country should be appointed as a minister. When the Parliament is constituted it is evident that it will be a House consisting of more than 300 members and they will all be members elected by the people of the country and there is no reason why an outsider who is not a member of the Parliament should be appointed as a minister. It cannot be imagined that out of a total of 300 or 400 members of the Parliament the President or the Leader of the party will not be able to find out a suitable person to be taken into the ministry and hence he will be forced to choose a minister who is not a member of the Parliament. I think that it goes against the spirit of democracy; rather it cuts at the very root of democracy not to choose a minister from out of the members of the Parliament chosen by the people of the country. Therefore I submit that this clause should be replaced by my amendment.

After this I want to say a few words regarding the amendment which has been proposed by my honourable Friend Dr. Ambedkar, *viz.,* No. 1329. On this matter I have also given notice of an amendment, No. 1312, which reads:

"In choosing his Ministers the President shall be generally guided by the instruction set out in Schedule 4(A)."

Now my friend has brought up a similar amendment, though not exactly the same thing, and has selected the Schedule to be 3(A). I would point out that Schedule 3(A) is not the proper place nor should this schedule be numbered as Schedule 3(A), because in the existing schedules we find that Schedule 4 gives the instructions to the Governors and Schedule 3 is the form of declaration. Therefore I submit that if any proper place is to be given to this schedule it can only be either Schedule 4 or 4(A). It cannot be given a place as Schedule 3(A). Besides this, in the amendment proposed by my honourable Friend the last portion, *viz.,* "but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions", is in fact the negation of the instruction that has been given to the President. The spirit of this schedule is that in

choosing the ministers the President should have regard to giving proper representation to the minorities in the Ministry. The instruction as has been laid down by my honourable Friend Dr. Ambedkar gives me to understand that the idea that proper representation should be given to the minorities in the Ministry cannot be met if this portion is maintained in the amendment. In fact, my honourable Friend has been very generous here to give discretionary power to the President, whereas in his speech yesterday he was clear to the House that no discretionary power should be given to the President and the House had adopted it. By this amendment, in other words, he has given some discretionary power to the President. My submission would be that the Instrument of Instructions to the President should be very simple and clear as has been laid down in my amendment and I hope my honourable Friend Dr. Ambedkar will consider it and be pleased to amend his amendment accordingly, so that the Instrument of Instructions may stand very simple and clear.

Prof. K. T. Shah : Sir, I beg to move:

"That in clause (5) of article 62, for the words 'for any period of six consecutive months, is' the words 'after his appointment, is for any period of six consecutive months' be substituted."

The amended clause would then read:

"A minister, who after his appointment is for any period of six consecutive months not a member of either House of Parliament shall at the expiration of that period cease to be a minister."

This I take it must have been the intention. If for any consecutive period of six months, whether on account of his going abroad or doing other work which prevents him from being a member of the House, he is to be disqualified or that he should cease to be a minister, I think it could not have been the intention. What the intention of this clause must have been is that if a Minister is, *after* his appointment as Minister, not a member for six consecutive months, whether as originally not elected, or has not been able to find subsequently election to the House, he should cease to be a member. This, Sir, is merely a consequence of the principle of collective responsibility of a Minister, which requires every Minister to be a member of one or the other House of Parliament. As such I do not think it is necessary to present any elaborate case in support of this amendment. I commend it to the House.

Mr. Vice-President : There is an amendment to this amendment No. 71 of list V standing in the name of Mr. Krishnamachari. Does he move it?

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1326 of the List of Amendments for the word 'after' (in the words proposed to be substituted), the words 'from the date of' be substituted."

If this amendment is accepted, it will read: "from the date of his appointment, is for any period of six consecutive months" and so on. This is a very minor amendment. It makes the meaning very precise and indicates from when the six months will operate. I trust the House will accept it.

Shri H. V. Kamath (C. P. and Berar: General): May I suggest to my Friend Mr. Krishnamachari that consistently with the import and meaning of his amendment the word "any" should be substituted by the word "a". The word "any" makes no sense in this context.

Shri T. T. Krishnamachari : Personally I have no objection, though I do not think it will make any material difference.

(Amendment No. 1327 was not moved.)

Prof. Shibban Lal Saksena (United Provinces: General): Sir, I beg to move:

"That in clause (5) of article 62, for the words 'either House of Parliament' the words 'House of the People' be substituted."

[Prof. Shibban Lal Saksena]

This has been further amended by my amendment to this amendment No. 72 of list V. I beg to move:

"That for amendment No. 1328 of the List of Amendments the following be substituted:

'That in clause (5) of article 62, for the words "is not a member" the words "is not an elected member" be substituted.' "

This is an amendment of a fundamental character. We have provided in the Constitution for nomination of twelve members to the Council of States. There will be twelve members who are nominated in that Council and in the Lower House Anglo-Indians will also be nominated. According to this clause (5) as it stands, members who have not been returned by the electorate shall be able to be permanent Ministers of the Government. This is altogether against all democratic methods. Formerly, I had desired that only members of the Lower House who were elected by the General Electorate should be eligible to be appointed as Ministers but after seeing the opinion of many Members I thought that my amendment should not be so extreme, but I do feel that unless everybody who is a Minister has got the confidence of the electorate, he should not be appointed as one. I therefore want that instead of "is not a member" it should be "is not an elected member". You may remember, formerly, when we were discussing the election of the President, we provided that only elected members should be entitled to vote. Now, if members nominated are not fit to vote at the Presidential election, if we do not credit them with that much responsibility, surely to be a Minister of the Government of India is a far more responsible office. The same will be the case about any Cabinet in any province. Therefore, if nominated members are not fit to vote for the President's election they are also not fit to be appointed Ministers of any Government. Every Minister who is a member of a Cabinet must seek open election and if he is returned, only then he should be appointed a Minister. Otherwise, what will happen is this. In many provinces we shall have Upper Chambers, and there too there will be nominated members and if these nominated members may become Ministers I am sure an occasion might arise when the whole Council of Ministers is composed of nominated members excepting perhaps the Prime Minister. That will be a very extraordinary situation indeed. It would be a complete negation of democracy. Therefore I want this question to be properly understood. Probably, this was the purpose of my honourable Friend Dr. Ambedkar and what he meant was that if a Minister does not become a member of either House within six months, he ceases to be a Minister. By this, he surely meant that he should be elected and I would very much welcome it from him if that is his purpose, and I expect he will accept my amendment. I hope in this way he will see that Government is absolved from the charge that in our Constitution there could be Cabinets where except the Prime Minister all the Ministers are nominated. Especially in the State legislatures, as at present provided about two-thirds of the members in the Upper Chamber shall be nominated and if any Prime Minister thinks of nominating only those members, then the whole Cabinet will become a sort of nominated Cabinet and that surely is utterly against democratic principles. Similarly, in the Central Parliament also, the twelve members whom the President may nominate may be persons the majority of whom may be appointed to the Cabinet. It may be that such a thing may not arise, but it is quite possible and we should see that no Prime Minister is able to allow his power to be so misused. I therefore think that the addition of the word "elected member" would make the whole thing perfectly right. I hope Dr. Ambedkar will accept this amendment. Sir, I move.

(Amendment Nos. 1330 and 1331 were not moved.)

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That after clause (6) of article 62, the following new clause be inserted:

'(7) Every Minister shall, before he enters upon the functions and responsibilities of his office, make a declaration and take steps in regard to any right, title, corresponding to those provided in this Constitution for the President and Vice-President, and shall take an oath—or make a solemn declaration—in the presence of the President and of his colleagues in the following form.' "

Sir, I see that the form is not printed here. I do not know whether it was some separate slip that I had given which is left out or forgotten or has been lost, but the oath actually suggested has not been printed. I hope, Sir, that would not be an objection.

Mr. Vice-President : That will not be an objection. At the same time, I have to make it clear that the form has been received by the office.

Prof. K. T. Shah : I may have forgotten. I am not blaming the office. The form is one which I have read on the former occasion, Sir, I have not got that paper here, but I can say from memory.

Mr. Vice-President : You may proceed with your speech.

Prof. K. T. Shah : This, Sir, is an amendment which in principle I have been pressing for from a variety of angles, whether as regards the President or the Minister or the Prime Minister. It was to me a very painful and surprising phenomenon that yesterday, when one of the most satisfactory reasoned replies was given to one of my amendments by the Chairman of the Drafting Committee, this particular point was not answered; I do not know, whether it remained unanswered by oversight, or by deliberate omission. I had taken care to remind him that he had assured me, or at any rate, he had made a sort of promise when discussing a similar matter in regard to the President that when or if the matter occurred in connection with the Ministers, who had the real effective executive power under this Constitution, he might consider it. I say, Sir, it was extremely surprising that such a careful, painstaking champion of the Draft should have, notwithstanding a pointed reminder, chosen to remain altogether silent and the silence was still more intriguing, when one of the honourable Members actually asked whether there was any answer to that particular point. It seems either that the Honourable the Chairman of the Drafting Committee has no answer or does not wish to answer, or has made a promise which is so embarrassing that he does not wish now to be even reminded of it.

Whatever it may be, Sir, I beg to place before this House that even in the Press that particular item seems to have been completely overlooked, whether it was by oversight just as the form is not printed here,—my mistake of course,—or for any reason, one particular most essential item that in my opinion would guarantee a purity, an honesty, an honourableness in the working of our Government seems to be killed by a strange conspiracy of silence. I trust that this is a matter, at least when we are dealing with the Ministers, that the draftsman will take note. It is not a matter of changing a comma or a semi-colon; it is not a matter of substituting ministers for Council of Ministers; it is a matter, Sir, which goes to the very foundation of the actual working of the governmental machinery; and, as such, Sir, I hope that those who have it in their power to mould, form, and shape this Constitution, to put it into a proper wording, and to give it a sound working character, will appreciate the desire with which the principle is placed before them from one angle and another, with a view to make them realise that we do stand in need of some such provision in our Constitution.

I was advised, Sir, yesterday from a high authority, that if I had not taken upon myself this unnecessary task of putting forward amendments to every clause, and if I had concentrated myself on a few principles, I might have proved more useful. Sir, I do not measure the usefulness of my amendments

[Prof. K. T. Shah]

by the number of them which are carried. I measure the usefulness of my amendments merely by the degree of thought and interest or opposition I provoke; and, as such, I feel perfectly satisfied, whether or not they are accepted, if the honourable Members, including Ministers of the Government of India, are given furiously to think in the matter; and have to reply specifically to points of that character. Here, however, Sir, is a case in which I seem to have, whether consciously or unconsciously, accepted and acted up to such an honourable and exalted advice; and appear to have concentrated myself on this principle. On this I have been labouring time and again, from one angle and another. And yet what is the fate? Failure, of course, to persuade the drafting and piloting block to see eye to eye with me. There is no possibility of an effective reply. There is no gainsaying the desirability of the points I am making. And yet not only do I get no reply; the very point I urged is suppressed or blacked out even in the press. And this conspiracy of silence, to say the least, is amazing. I trust on this occasion the silence will be broken; I trust on this occasion I will be given, what has been called "a crushing reply". And I trust this time, at any rate, the reply will be so crushing that I will cease to put forward, at least to this House, this kind of amendment.

Mr. Vice-President : There is an amendment to this amendment. It is No. 51 of List No. IV and stands in the name of Mr. H. V. Kamath.

Shri H. V. Kamath : Sir, I move:—

That for amendment No. 1332 just moved by my honourable Friend, Prof. K. T. Shah, the following be substituted:—

"That after clause (6) of article 62, the following new clause be inserted:

'(7) Every minister including the Prime Minister shall, before he enters upon his office, make a full disclosure to Parliament of any interest, right, share property or title he may have in any enterprise, business or trade, directly owned or controlled by the State, or which is in any way aided, protected or subsidised by the State; and Parliament may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.' "

My amendment, Sir, does not go as far my honourable Friend, Prof. K. T. Shah's goes. I only seek through this amendment that a minister before he enters upon his office shall disclose to Parliament whatever share, interest or title he may have in any business or enterprise that may be owned, controlled or subsidised by Government and I leave it to Parliament to deal with the matter as best as it can. It may call upon him to sell it to Government; Parliament may call upon him to make it over to be administered in trust for him or the Reserve Bank may hold it in safe trust. I leave it to Parliament as our sovereign legislature to decide the best course that may be adopted in the circumstances for dealing with this particular matter.

I would, by your leave, Sir, like to read from the Factory Act, to which I referred in a previous occasion, the Act which we passed during the last session of the Legislative Assembly. There is a section, Section 8 in this Factory Act, of 1948, which provides for the appointment of Factory Inspectors and one clause of this section is to the effect:—

"No person shall be appointed as Factory Inspector or having been so appointed shall continue to hold office, who is or becomes directly or indirectly interested in the Factory or in any process or business carried on therein, or in any patent or machinery connected therewith."

Sir, there is another section, Section 10, providing for the appointment of Factory Doctors, Certifying Surgeons. That also provides that:

"Certifying Surgeon. No person shall be appointed to be or authorised to exercise the powers of a Certifying Surgeon, or having been so appointed or authorised, continue to exercise such powers, who is or becomes an occupier of a factory or is or becomes directly or indirectly interested therein or in any process or business carried on therein or in any patent or machinery connected therewith or is otherwise in the employ of the factory."

Now, it is obvious, it is plain as a pike staff, that the relationship of a Minister of State is far more intimate, is fraught with far greater possibilities for good or for evil than the relationship of a Factory Inspector or Certifying Surgeon to his particular factory or any connected business. What is sauce for the goose must be sauce for the gander as well. If this principle is applied on a larger scale, I do not see why this principle laid down for the Factory Inspector and Certifying Surgeon in the Factories Act should not be applied to Ministers of State.

You will permit, me, Sir, to remind the House of what Dr. Ambedkar told us a couple of days ago when replying to the debate on Article 47. I hope I have his leave as well to remind the House and remind him too about the words he used when replying to that debate. Referring to an amendment regarding a similar provision for the President to declare to Parliament and to divest himself of all right, interest, share or title in any business or enterprise owned or controlled, subsidised or aided by the State, Dr. Ambedkar said, "If at all such a provision is necessary, it should be with regard to the Prime Minister and the other Ministers of State, because, it is they who are in complete control of the administration of the State, If any person under the Government of India has any opportunity of aggrandising himself, it is either the Prime Minister or the Ministers of State and such a provision,—mark his words—such a provision ought to have been made—he did not say may be made, he said 'ought to have been' imposed—on their tenure and not on the President." I hope Dr. Ambedkar will reply to this particular amendment after great consideration and in detail and I hope he will not find a way out of the tangle that might have been caused by the words, by the language that he employed on a previous occasion. I hope he will stick to the views which he expressed only a couple of days ago, not a year or two ago; and I hope during these two days, he has not been prevailed upon, or he has not had the occasion or opportunity, or has not been persuaded to change his views in the matter. After reminding the House and Dr. Ambedkar about what he himself said a couple of days ago, I do not think there is anything more for me to say, but that Dr. Ambedkar will not hesitate to uphold his own view, not a very ancient view, but a very recent view and will see his way to accept this amendment.

(Amendment Nos. 1333, 1334 and 1335 were not moved.)

Mr. Vice-President : The article is now open for general discussion.

It is suggested that the next two amendment Nos. 1336 and 1337 also deal with similar matters and may be taken up here. Prof. Shah, will you please move your amendment No. 1336?

Mr. Naziruddin Ahmad : That is a new article.

Prof. K. T. Shah : It is a new article; it is not an amendment.

Mr. Vice-President : Just as you please.

Prof. K. T. Shah : I am in your hands. If you ask me to move it now, I shall do so.

Mr. Vice-President : I thought the general discussion may take place together. Today, as honourable Members are aware, we have to adjourn the House at 1 p.m. in order to afford facilities to our Muslim brethren to the Jumma prayers. If there is no objection, I would like Prof. K. T. Shah to move his amendment now.

Shri Amiyo Kumar Ghosh (Bihar: General): Sir, this is a new article. We may dispose of article 62 first, and then take up this new article.

Mr. Vice-President : Suppose we forget the niceties of law for one occasion.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That after article 62, the following new article be inserted:

'62-A. No one shall be elected or appointed to any public office including that of the President, Governor, Minister of the Union or of any State of the Union, Judge of the Supreme Court or of any High Court in any State in the Union, who—

(a) is not able to read or write this express in the English language; or

(b) within ten years from the day when this Constitution comes into operation, is not able to read or write or express himself in the National language;

(c) or who has been found guilty at any time before such election or appointment of any offence against the safety, security or integrity of the Union; or

(d) of any offence involving moral turpitude and making him liable on conviction to a maximum punishment of two years imprisonment;

(e) or who has not, prior to such election or appointment, served in some public body, or done some form of social work, or otherwise proved his fitness, capacity and suitability for such election or appointment as may be laid down by Parliament by law in that behalf.' "

Sir, these are some of the points which, in my opinion, should be positively fulfilled; or they should negatively act as disqualification for any person to hold such exalted offices as that of the President, Minister, Governor, Judge and so on.

The points that I am making may seem at first sight to be so obvious that it may appear somewhat improper to put them in the Constitution. I am free to admit, however, that, for instance, the first item in my amendment seems to be of that category, namely ability to read or write and express himself in the English language. At the present time, Sir, however, constituted as we are, and with the absence of a national language of our own, it is important that members should be able to exchange, in some sort of a common medium of intercourse, their ideas on crucial matters in the Constitution or in any piece of legislation, or other legislative work that may come before Parliament hereafter. Judging from that point of view, and without wanting to provide that English should for ever continue to be the medium of intercourse of this country, or over this Sub-Continent, I think it but right to require that, unless persons who choose to be or who are elected to be members of either House of Parliament, are able to express themselves in some common language that others of their fellows may understand, it would be improper, it would be against the interest of the country to do so.

Opinion, Sir, I quite realize, may differ on this subject, honestly differ, perhaps very hotly differ. But I submit, Sir, that very often we are all familiar with the phenomenon in this House of speeches delivered in one language which fall absolutely meaningless upon the ears or minds of other Members of this House. It is but fair not only to those Members who cannot follow the language, but it is also in fairness to the speakers themselves, that, I submit, some common medium of expression should be used, so that everybody should be in a position to follow and do justice to the remarks. I at least do not think that any Member of this House is intended merely to raise his hands. I do believe that every member intelligently and carefully follows all that is said: and, as such, it would be a loss to the House if anything said in this House is not, for mere lack of following the language or understanding the idiom in which some idea is expressed, it should be lost upon any section of the House. It is for this reason, Sir, that I make this provision in the Constitution, at least for ten years to come.

In the next clause I require a similar provision to be made for the national language. I am equally strong on the subject that once we have got over this initial hurdle, once we have been able to fix upon a national language, within the given period of ten years—and I think that period is sufficiently long for this purpose,—every member should be expected to know, or be able to read and

write and express himself in the national language. Once again, the basic logic is the same in this case as in the former, *viz.,* that people should be able to express themselves in some common medium of speech that is understood by all their fellow members. It must therefore be made a categorical requirement that, not only we must have a national Language which is, so to say, a statutory provision more often broken than observed, but it should be a living force, so that in this House or its successor, or in the Parliament, we should be able to exchange in our own language all the thoughts, in all the fineness and technicality that such legal documents require. I think, therefore, that no further argument is necessary to support the provision of such a positive qualification from those who aspire to hold high offices in the country that I have enumerated or described in my amendment in the first or governing clause.

As regards the clause with reference to moral cleanliness of those who aspire to such offices that, again, is almost self-evident and I trust there can be and will be no opposition to accept such a provision as this. I fear that if we take things for granted, as it might be urged that in a case like this it must be taken for granted, we may land ourselves into difficulties, or embarrassments, to put it mildly, which it might be as well for us to avoid from the beginning.

Here, again, is may I say, Sir, another of those fundamental principles on which I seem to have concentrated myself as I was advised the other day on high authority, but to no avail, at least as regards some people who are otherwise convinced.

Finally, Sir, I insist upon the qualification that those who aspire to be members of such legislature, or to hold such high offices, must themselves have some positive qualifications. I am not just now thinking of purely academical qualifications. I am thinking of those more mature, deeper, fuller indices or measures of qualifications, which might be provided by constructive work, or social service, or some other work that is much more tangible evidence of fitness and suitability of such people for the posts, than mere academical qualifications. Those latter are very often the work merely of a good memory rather than of a good character, or a good general outlook on the part of the person concerned, not a means or index of judging his real, objective fitness for such responsibilities. The criteria—or indices—I am suggesting will provide better, more reliable means of judging the suitability of particular individuals for the posts they aspire to, or which they may be asked to fill.

With these words, Sir, I commend this motion to the House.

Mr. Vice-President : There are two amendments to this amendment. One is No. 52 of List IV in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1336 of the List of Amendments, in the proposed new article 62-A the words 'Judge of the Supreme Court or of any High Court in any State in the Union' be deleted."

Sir, the proposed new article 62-A is of a very comprehensive character. In fact through this amendment Prof. Shah, with his characteristic thoroughness, has sought to introduce certain conditions as to public servants and specially Ministers, Presidents and even Judges of the High Court and of the Supreme Court. The test he would lay down for them are (a) that they must be able to read and write and express themselves in the English language; then perhaps alternatively, (b) they must know the national language, and (c) and (d) that they must not have been found guilty of any offence, and (e) they must be of proved fitness.

Sir, with regard to the idea behind this amendment, I have nothing to say, I also support the idea. But I do consider that the Judges of the High Court

[Mr. Naziruddin Ahmad]

and of the Supreme Court should be outside these tests—not that I desire that they should be illiterate or be incapable of expressing themselves in English or in the national language, or that they should have been connected of offences involving moral turpitude or that they need not have any provable fitness—far from it. But I do submit that in this very Draft Constitution itself we have provided certain standards by which the Judges of the High Court and of the Supreme Court are to be appointed. In clause (2) of article 193 we have clearly provided that a person can be appointed a Judge of the High Court only if he has been a judicial officer or an Advocate of a certain standing, and under clause (3) of article 103, no person can be appointed a Judge of the Supreme Court unless he has been a Judge of the High Court or an Advocate for a period. I believe that Advocates are at least expected to be, for any length of time that we can now foresee, literate or be capable of expressing themselves in English. At present we have a galaxy of lawyers in the House—Dr. Ambedkar, Mr. K. M. Munshi, Mr. Ananthasayanam Ayyangar and a lot of others, Alladi Krishnaswamy Ayyar (A voice: And yourself) of course my humbleself. There are a lot of Advocates in the country and I believe that they will, at least for a long time to come, be literate.

It could perhaps be safely assumed that, with the spread of compulsory primary education, lawyers would be literate, and if one is not literate, he cannot be a lawyer. To be a lawyer and also an Advocate, one has to pass certain tests in literacy and common sense. So that if one is not literate he could not be an Advocate and so he could not be appointed a Judge of a High Court and he could not also be appointed Judge of the Supreme Court.

Then with regard to expressing themselves in the national language, I think if and when English is to be discarded, Advocates and Judges must necessarily possess the minimum literacy qualifications which are required of them and they ought to be able to express themselves in the national language. With in a foreseeable period of time, an Advocate, a Judge of the High Court or of the Supreme Court must necessarily be able to express themselves in the English language, so long as it is current, and thereafter, of course, in the national language.

I also believe that no person who is guilty of any offence involving moral turpitude can be appointed Judge of a High Court or of the Supreme Court. He would initially cease to be an Advocate and therefore cannot be appointed a Judge. A provision like this for Judges is therefore absolutely unnecessary, though we are indebted to the indefatigable labours of Mr. Kamath who disclosed here yesterday, that a Minister has been appointed in a certain area who had a previous conviction relating to black-marketing. Although Ministers of this type may be appointed, Judges cannot possibly be so appointed. I devoutly hope that we should rather cease to be a free country than contemplate even the possibility of Judges being appointed who have previous convictions for offences involving any moral turpitude or be illiterate.

Shri H. V. Kamath : Is my honourable Friend of the view that a person convicted of black-marketing may be appointed a Minister? I am astonished.

Mr. Naziruddin Ahmad : I did not express any personal view. I was careful to state that we were indebted to the labours of Mr. Kamath himself for the discovery. In fact, it was he who said yesterday that a Minister had been appointed at a certain place who had been convicted of an offence involving moral turpitude relating to black-marketing. So such an event is conceivable. Such considerations may be applicable to a Minister but not to a Judge. I therefore submit that these words relating to Judges should be deleted. In fact it would be highly insulting to the Judges of the High Court and of the Supreme Court themselves to be told that no one should be appointed a Judge

who had no literacy qualifications or who had previous convictions. These words should therefore be deleted.

Mr. Vice-President : The next amendment to this amendment is No. 73 in List V. But it is disallowed because it has previously been covered.

Then amendment No. 1337, standing in the name of Mr. Bharati.

(Amendment No. 1337 was not moved.)

Now, the article is open for general discussion. Mr. Sidhwa.

Shri R. K. Sidhwa (C. P. & Berar : General): Mr. Vice-President, Sir, this article has created a lot of discussion by way of amendments, particularly as regards clauses (1), (2) and (5). The rest of them are formal. Clause (1) relates to the appointment of the Prime Minister by the President and the former appointing his colleagues as other ministers. Several amendments have been moved which state that the President should call the person who enjoys the confidence of the House and who could form a stable ministry. Sir, this is really a very good suggestion undoubtedly and from our past experience we know that the Governors of some provinces have intentionally called, for their own convenience and for their own purpose, a person who did not enjoy the confidence of the House, and who had hardly a following of a small minority, to form a cabinet. We have got the instances of Bengal, of Assam, of Orissa, of Sind and of the Punjab. And these Governors created hell and created mischief by appointing a person who did not at all enjoy the confidence of the House. And what was the other aspect of it? When a ministry was thus formed under the 1935 Act, no session could be called, until the next budget session came, once in a year. So the man enjoyed the benefits of his Ministry for full one year, and then when the budget came, he had consolidated his position by offering various kinds of bribes and jobs to members, and showed that he enjoyed the confidence of the House. Of course, I do realise under the new constitution, conditions have changed, and in the Instrument of Instructions it is stated that the Prime Minister should be such and such who enjoys the confidence of the House—that is in Schedule IIIA. I know that the Schedule also forms part of the Constitution. Therefore, I say this is a good suggestion. Keeping in mind all that has happened in the past, I support this motion, for this reason that our Governors and our Presidents will not be irresponsible persons. If a President were to call a person who really did not enjoy the confidence of the House that President would be subject to impeachment under these clauses and the Prime Minister also to dismissal.

Sir, I know that in the past, requisitions were sent to a Governor to call a session of the legislature for the purpose of a no-confidence in the ministry, but the Governor did not call such a session. But today the position is quite different. If such a mistake is committed, the President shall have to call for a session, otherwise he will be subject to many disqualifications that we have passed in the various articles. Therefore, fearing in my own mind the same apprehensions that are in the minds of honourable Members, still I do not want to take that view which existed in the past, and I support clause (1) as stated in the draft article.

The other important clause is No. (5) which states that a minister who, for any period of six consecutive months, is not a member of either House of Parliament shall at the expiration of that period cease to be a minister. Such a clause existed in the 1935 Act, and it has been borrowed from there. I wish that such a clause should not exist in our Constitution, for the simple reason that in our new legislature there will be about five hundred members, and if we cannot secure a minister with technical or expert knowledge that may be necessary it would be a slur on the legislature if it does not contain a single person with the requisite expert knowledge. Apart from that, Sir, our whole Constitution is based on the Parliamentary system of Great Britain and in

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Great Britain elections are run on the party system. There they take care to see that persons who are likely to be Ministers, with special knowledge and who are experts, are given party tickets, and they see to it that those candidates are returned. We also shall be running, under this Constitution, similar party elections, and care should be taken to see that persons with special knowledge are given tickets to contest the seats. Sir, I do not understand why, except probably in the case of the Ministry of Law and that of Finance, where knowledge of certain special subjects is required, the other Ministers should have any special expert qualifications, except commonsense, practical knowledge, ability, perseverance, strong will, tenacity of purpose and a pushing nature. These are the qualifications that a Minister should possess, rather than mere theoretical knowledge. These are the qualifications the Ministers should possess. A man with theoretical knowledge fails as we know, in practical politics. In my opinion a man with practical knowledge is far superior to one who possesses only theoretical knowledge. Sir, even assuming that we want a person with theoretical knowledge, I am sure that the party running the elections will take care to see that such a person is given a party ticket. Further I consider it a slur on the Legislature that we should have to go outside the ranks of members for filling post of a particular Minister. Such things have happened in the past. But hereafter it will be unnecessary to have in the Cabinet, as we have in the Legislatures, a combination of Members some of whom do not necessarily advocate the policy of the party in power. I therefore feel that this matter should be really considered from that point of view. In the British Cabinet I have not seen anyone who is not a Member of Parliament is taken in the cabinet. Whatever may have happened in the past, today this is the case. It may be argued that a non-Member would be in the Cabinet only for six months. I object for even one day an outsider to be a member of the Cabinet. Why should we have for six months a non-Member who should hold office when we can find among Members suitable person? I therefore do contend that this clause should be deleted.

Now coming to the last amendment of my friend Prof. Shah, I may say it is a laudable one. There could be no objection to it. But I do feel that he has given great prominence to the English language by saying that the office of Governor, President and Ministers should be given to those persons in the first instance who know English and who, within ten years, learn the national language. My reaction to such a clause is that the President, the Governors and the Ministers should be only those who know both English and the national language at the very outset. The term of office of these dignitaries is five years and we have passed a clause laying down that the Governor shall be elected once and only once more, that is to say for ten years in all. If the Professor's amendment is accepted, it will mean that by the time a President or Governor is expected to learn the national language he would have retired. Of course I do not think it is appropriate to insert it in the Constitution. Even on merits, such a provision would be defective in that it is the national language that should be given importance and not English. We cannot, I agree, summarily reject the English language. Therefore we may provide that if a person does not know the national language along with English he should not be deemed to be qualified to hold the office of President, Governor, etc.

As far as the other clauses are concerned, particularly those relating to honesty, integrity, maximum punishment for moral turpitude and so on are concerned, I know that in the 1935 Act such provisions exist. They may well find a place in the disqualification clause for those who contest elections. It is not enough to lay down these things for the big offices only. No man who has been convicted or punished for moral turpitude would be chosen as a candidate for election. From that point of view, while the other clauses of

the amendments are commendable, I do feel, this has no place here. This may find a place in the general disqualification clause which we shall be providing in the case of the Governors, the President and even the Ministers.

With these words I support the article except clause (5) for which I have stated that the Chairman of the Drafting Committee will again reconsider in view of my suggestions. Unfortunately he was not present when I presented forceful arguments in support of my contention. Otherwise he would have certainly considered, this matter. I hope he will bear in mind my point and agree that such a clause in a Free India Constitution should not exist. With these words I commend the article for acceptance.

Shri Mahavir Tyagi (United Provinces : General): Sir, I rise to oppose this amendment. There is some misunderstanding in the minds of some of my friends here. They feel, as my friends Kazi Karimuddin, Mr. Pocker Sahib and others feel, that the Prime Minister and his Cabinet are the representatives of the House. Politically speaking, and speaking from the point of view of democracy, they are not liable to represent the House. No Prime Minister represents the House. The House is represented by the Chair here. It is only the Chair through whom the House can express itself. The Prime Minister represents the majority party in the House and therefore the Prime Minister cannot be elected by the whole House. Any person who is elected by the whole House has to represent the whole House. So, if the Prime Minister were to be elected by the whole House, then morally he would have to be responsible to the whole House. The Prime Minister is not responsible to the whole House. He is responsible only for the majority outside that has sent him here. Though he keeps in view the views of the opposite party also, he cannot be elected by the whole House. If he is to be elected by the whole House, then his position as party Leader will be gone altogether, because even those who have cast their votes in the ballot against him will claim him as their representative. Just as in the case of a constituency which elects a Member, the member thus elected is expected to represent even the views of those who voted against him, the Prime Minister also, if the whole House were to elect him, would have to represent even the party in opposition. Such an election is against the principles of a party-systemed democracy. He represents the general will of the masses outside, the vast bulk of the population who have voted his party as the party of their choice. Though he, of course, protects the minorities as a matter of duty yet he continues to represent the majority party only. The case of the President is quite different. He is elected by all the parties, which means by all the elected representatives of the people. He therefore acts as the guardian of all alike. As the head of the State, it is only through him that the general will of the people is expressed. The ministers should be made to invoke the general will. The President contains the biggest representation in him. Such a President shall therefore have the right of appointing the Ministers. We have already clarified the issue by providing in the Constitution, further on, as Instrument of Instructions to the President that when he appoints the Ministers he will see to it that they shall enjoy the confidence of the House. But the appointment should be made by the President because he is the only one person in whom the whole nation has invested its sovereignty and therefore the amendment of Mr. Pocker Sahib goes against the whole set up of democracy.

Then another amendment has been moved in which it is said that the Ministers will hold office so long as they enjoy the confidence of the House. In the Draft Constitution the position virtually comes to the same. The Ministers are appointed by the President and when that sole representative of the people appoints the Ministers, it is only he who will dispense with their services if circumstances so demand. The House is always at liberty to pass a vote of confidence or no-confidence. A vote of no-confidence in the Cabinet passed by the House is always a recommendation to the President to see that the

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Ministry should go and another appointed in its place. This point is further on enunciated in the Constitution. I therefore oppose this amendment also.

Then there is the amendment of Prof. Shah in which he says that Ministers should know the English language for ten years, and Hindi after the next ten years. I happen to be an anarchist by faith so far as literacy is concerned. I do not believe in the present-day education. I am opposed to the notion of literacy also, even though it has its own value. If I were a boy now, I would refuse to read and write. As it was, I practically refused to read and write and hence I am a semi-literate. The majority in India are illiterate persons. Why should they be denied their share in the administration of the country? I wonder, why should literacy be considered as the supreme achievement of men. Why should it be made as the sole criterion for entrusting the governance of a country to a person, and why Art, Industry mechanics, Physique or Beauty be not chosen as a better criterion, Ranjit Singh was not literate. Shivaji was not literate. Akbar was not much of a literate. But all of them were administering their states very well. I submit, Sir, that we should not attach too much importance to literacy. I ask Dr. Ambedkar, does he ever write? Probably he has got writers to write for him and readers to read to him. I do not see why Ministers need read and write. Whenever they want to write anything, they can use typists. Neither reading nor writing is necessary. What is necessary is initiative, honesty, personality, integrity, intelligence and sincerity. These are the qualifications that a man should have to become a Minister. It is not literacy which is important.

Shri H. V. Kamath : Does my redoubtable friend want to keep India as illiterate as she is today?

The Honourable Dr. Ambedkar : Have you any conscientious objection against literacy?

Shri Mahavir Tyagi: No, Sir.

Shri B. H. Khandekar (Kolhapur): I wish to raise my small voice in support of the lone and indefatigable fighter, Prof. K. T. Shah. I am here to support particularly his amendment No. 1332. I want complete elimination of the possibility of corruption as far as the Ministers are concerned. I differ from him in the case of the President. I make a very great distinction between the President and the Ministers for the following reasons: The President has no executive power. Sir, the President is the one, only one, the best and the highest citizen of the country. He is the delight of crores of eyes and he is the balm of the people's heart. It is not proper to have any suspicion with regard to this real idol of the people. I am not being superstitious at all. But the Ministers are on a different footing and are very different persons. They have executive authority and they are too many comparatively. In this country, Sir, you know that some men are very great but they are very few. I remember having seen a cartoon the day before in one of the weeklies—I believe it is Shankar's—that now-a-days two persons are always found doing all the work—Pandit Jawaharlal Nehru and Sardar Patel. One or two may be added to this class but the rest are what I may call comparatively very ordinary persons.

Now, I wish honourable Members to revive their memory of their college days and to think of a very great book on political philosophy—the Republic of Plato. Plato in trying to give us an ideal state, makes it incumbent on the Governors to have absolutely no personal interest in any property. He goes even further and says that Governors should not have even families. We in this country talk a lot of idealism, of very high ideals, but when it comes to actual practice, it seems to me that we fall deplorably low. If it is impossible

to carry out Plato's utopian ideas, at least we should go as far as possible to approach the ideal. I would not have been so suspicious but for the singular service rendered by my honourable Friend Mr. Kamath in giving a particular example, a deplorable case, a scandalous case from a certain State in this country where a person, although convicted for blackmarketing, became a Minister. That is really most scandalous. It is not only in the States but also in the provinces that there are so many rumours about widespread corruption. These might be rumours but you cannot have smoke without fire: as the Sanskrit saying goes:

"Yatra yatra dhoomah
Tatra tatra wahnih."

When we talk of Gandhiji and bring his name every time, let us try to be in a small measure worthy of that great man and if I were to bring in an amendment to Prof. Shah's amendment at this late hour I would go so far as to say that ministers should not only make a declaration of their interests and their property but they should also make a declaration of their relatives and friends. There is so much of favouritism, nepotism and partiality that we seem to be going down and down though we have achieved great things. I do wish to support to a certain extent the amendment moved by Prof. Shah with regard to the ministers or high officials having a knowledge of English during the transition period. It was very interesting to listen to the animated talk of Mr. Mahavir Tyagi. He was almost for the elimination of literacy and he reminded us of Shivaji and others. I merely wish to remind the House about the skit that a French King had when he heard about Abraham Lincoln's definition of democracy as being "the government of the people, by the people and for the people." The French King immediately blurted "Democracy is government of the cattle by the cattle and for the cattle." If we are going to have democracy by illiterate men, it will be a democracy as described by the French King.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, of the amendments that have been moved I am prepared to accept amendment No. 1322 and 1326 as amended by No. 71 on List V. As to the rest of the amendments I should just like to make a sort of running commentary.

These amendments raise three points. The first point relates to the term of a minister, the second relates to the qualifications of a minister and the third relates to condition for membership of a cabinet. I shall take the first point for consideration, *viz.*, the term of a minister. On this point there are two amendments, one by Mr. Pocker and the other by Mr. Karimuddin. Mr. Pocker's amendment is that the minister shall continue in office so long as he continues to enjoy the confidence of the House, irrespective of other considerations. He may be a corrupt minister, he may be a bad minister, he may be quite incompetent, but if he happened to enjoy the confidence of the House then nobody shall be entitled to remove him from office. According to Mr. Karimuddin, the position that he has taken, if I have understood him correctly, is just the opposite. His position seems to be that the Minister shall be liable to removal only on impeachment for certains specified offences such as bribery, corruption, treason and so on, irrespective of the question whether he enjoys the confidence of the House or not. Even if a minister lost the confidence of the House, so long as there was no impeachment of that minister on the grounds that he has specified, it shall not be open either to the Prime Minister or the President to remove him from office. As the Honourable House will see both these amendments are in a certain sense inconsistent, if not contradictory. My submission is that the provision contained in sub-clause (2) of article 62 is a much better provision and covers both the points. Article 62, (2) states that the ministers shall hold office during the pleasure of the President. That means that a minister will be liable to removal on two

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grounds. One ground on which he would be liable to dismissal under the provisions contained in clause (2) of article 62 would be that he has lost the confidence of the House, and secondly, that his administration is not pure, because the word used here is "pleasure". It would be perfectly open under that particular clause of article 62 for the President to call for the removal of a particular minister on the ground that he is guilty of corruption or bribery or maladministration, although that particular minister probably is a person who enjoyed the confidence of the House. I think honourable Members will realise that the tenure of a minister must be subject not merely to one condition but to two conditions and the two conditions are purity of administration and confidence of the House. The article makes provision for both and therefore the amendments moved by my honourable Friends, Messrs. Pocker and Karimuddin are quite unnecessary.

With regard to the second point, namely the qualifications of ministers, we have three amendments. The first amendment is by Mr. Mohd. Tahir. His suggestion is that no person should be appointed a minister unless at the time of his appointment he is an elected member of the House. He does not admit the possibility of the cases covered in the proviso namely that although a person is not at the time of his appointment a member of the House, he may nonetheless be appointed as a minister in the cabinet subject to the condition that within six months he shall get himself elected to the House. The second qualification is by Prof. K. T. Shah. He said that a minister should belong to a majority party and his third qualification is that he must have a certain educational status. Now, with regard to the first point, namely, that no person shall be entitled to be appointed a Minister unless he is at the time of his appointment an elected member of the House, I think it forgets to take into consideration certain important matters which cannot be overlooked. First is this,—it is perfectly possible to imagine that a person who is otherwise competent to hold the post of a Minister has been defeated in a constituency for some reason which, although it may be perfectly good, might have annoyed the constituency and he might have incurred the displeasure of that particular constituency. It is not a reason why a member so competent as that should be not permitted to be appointed a member of the Cabinet on the assumption that he shall be able to get himself elected either from the same constituency or from another constituency. After all the privilege that is permitted is a privilege that extends only for six months. It does not confer a right to that individual to sit in the House without being elected at all. My second submission is this, that the fact that a nominated Minister is a member of the Cabinet, does not either violate the principle of collective responsibility nor does it violate the principle of confidence, because if he is a member of the Cabinet, if he is prepared to accept the policy of the Cabinet, stands part of the Cabinet and resigns with the Cabinet, when he ceases to have the confidence of the House, his membership of the Cabinet does not in any way cause any inconvenience or breach of the fundamental principles on which Parliamentary government is based. Therefore, this qualification, in my judgment, is quite unnecessary.

With regard to the second qualification, namely, that a member must be a member of the majority party, I think Prof. K. T. Shah has in contemplation or believes and hopes that the electorate will always return in the election a party which will always be in majority and another party which will be in a minority but in opposition. Now, it is not permissible to make any such assumption. It would be perfectly possible and natural, that in an election the Parliament may consist of various number of parties, none of which is in a majority. How is this principle to be invoked and put into operation in a situation of this sort where there are three parties none of which has a majority?

Therefore, in a contingency of that sort the qualification laid down by Prof. K. T. Shah makes government quite impossible.

Secondly, assuming there is a majority party in the House, but there is an emergency and it is desired both on the part of the majority party as well as on the part of the minority party that party quarrels should stop during the period of the emergency, that there shall be no party government, so that government may be able to meet an emergency—in that event, again, no such situation can be met except by a coalition government and if a coalition government takes the place, *ex hypothesi* the members of a minority party must be entitled to become members of the Cabinet. Therefore, I submit that on both those grounds this amendment is not a practicable amendment.

With regard to the educational qualification, notwithstanding what my Friend Mr. Mahavir Tyagi has said on the question of literary qualification, when I asked him whether in view of the fact that he expressed himself so vehemently against literary qualification whether he has any conscientious objection to literary education, he was very glad to assure me that he has none. All the same, I wonder whether there would be any Prime Minister or President who would think it desirable to appoint a person who does not know English, assuming that English remains the official language of the business of the Executive or of Parliament. I cannot conceive of such a thing. Supposing the official language was Hindi, Hindustani or Urdu—whatever it is—in that event, I again find it impossible to think that a Prime Minister would be so stupid as to appoint a Minister who did not understand the official language of the country or of the Administration, and while therefore it is no doubt a very desirable thing to bear in mind that persons who would hold a portfolio in the Government should have proper educational qualification, I think it is rather unnecessary to incorporate this principle in the Constitution itself.

Now, I come to the third condition for the membership of a Cabinet and that is that there should be a declaration of the interests, rights and properties belonging to a Minister before he actually assumes office. This amendment moved by Prof. K. T. Shah is to some extent amended by Mr. Kamath. Now, this is not the first time that this matter has been debated in the House. It was debated at the time when similar amendments were moved with regard to the article dealing with the appointment and oath of the President and I have had a great deal to say about it at that particular time and I do not wish to repeat what I said then on this occasion. My Friend Mr. Kamath reminded me of what I said on the occasion when the article dealing with the President was debated in this House and I do remember that I did say that such a provision might be necessary.....

Shri H. V. Kamath : May I remind Dr. Ambedkar of what exactly he said? I am reading from the official type-script of the Assembly Secretariat. These are his very words:

> "If any person in the Government of India has any opportunity of aggrandizing himself, it is either the Prime Minister or the Ministers of State and such a provision *ought* to have been imposed upon them for their tenure but not upon the President."

The Honourable Dr. B. R. Ambedkar : That is what I was saying. What I said was that such a provision might be necessary in the case of Ministers, and my friend Mr. Kamath also read some section from the Factory Act requiring similar qualifications for a factory inspector. Now, Sir, the position that we have to consider is this: no doubt, this is a very laudable object, namely, that the Ministers in charge should maintain the purity of administration. I do not think anybody in this House can have any quarrel over that matter. We all of us are interested in seeing that the administration is maintained at a high level, not only of efficiency but also of purity. The question really is this : what ought to be the sanctions for maintaining that purity? It seems to me there are two

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sanctions. One is this, namely, that we should require by law and by Constitution,— if this provision is to be effective— not only that the Ministers should make a declaration of their assets and their liabilities at the time when they assume office, but we must also have two supplementary provisions. One is that every Minister on quitting office shall also make a declaration of his assets on the day on which he resigns, so that everybody who is interested in assessing whether the administration was corrupt or not during the tenure of his office should be able to see what increase there is in the assets of the Minister and whether that increase can be accounted for by the savings which he can make out of his salary. The other provision would be that if we find that a Minister's increases in his assets on the day on which he resigns are not explainable by the normal increases due to his savings, then there must be a third provision to charge the Minister for explaining how he managed to increase his assets to an abnormal degree during that period. In my judgment, if you want to make this clause effective, then there must be three provisions as I stated. One is a declaration at the outset; second is a declaration at the end of the quitting of this office; thirdly, responsibility for explaining as to how the assets have come to be so abnormal and fourthly, declaring that to be an offence followed up by a penalty or by a fine. The mere declaration at the initial state.....

Mr. Naziruddin Ahmad : How could you trace or check invisible assets or secret assets?

The Honourable Dr B. R. Ambedkar : The whole thing is simply good for nothing, so to say. It might still be possible, notwithstanding this amendment, for the Minister to arrange the transfer of his assets during the period in such a manner that nobody might be able to know what he has done and therefore, although the object is laudable, the machinery provided is very inadequate and I say the remedy might be worse than the disease.

Shri H. V. Kamath : May I, Sir, presume that Dr. Ambedkar at least accepts the amendment in principle and that he has not resiled from the view which he propounded the other day, that he has not recanted?

The Honourable Dr. B. R. Ambedkar : I do not resile from my view at all. All I am saying is that the remedy provided is very inadequate and not effective, and therefore, I am not in a position to accept it.

Prof. Shibban Lal Saksena : Make it more comprehensive.

The Honourable Dr. B. R. Ambedkar : I cannot do it now. It was the business of those who move the amendment to make the thing fool-proof and knave-proof, but they did not.

Now, Sir, I was saying that nobody has any objection; nobody quarrels with the aim and object which is behind this amendment. The question is, what sort of sanction we should forget. As I said, the legal sanction is inadequate. Have we no other sanction at all? In my judgment, we have a better sanction for the enforcement of the purity of administration, and that is public opinion as mobilised and focussed in the Legislative Assembly. My honourable Friend, Mr. H. V. Kamath cited the illustration of the Factory Act. The reason why those disqualifications had been introduced in the case of the Factory Inspector is because public opinion cannot touch him, but public opinion is every minute glowing, so to say, against the Ministry, and if the House so desires at any time, it can make itself felt on any particular point of maladministration and remove the Ministry; and my submission, therefore, is that there is far greater sanction in the opinion and the authority of the House to enforce purity of administration, so as to nullify the necessity of having an outside legal sanction at all.

Shri Lokanath Misra (Orissa: General): Is that not a more impossible task?

The Honourable Dr. B. R. Ambedkar : Democracy has to perform many more impossible tasks. If you want democracy, you must face them.

Now, Sir, I come to the amendment of my honourable Friend, Mr. Naziruddin Ahmad. He wants the deletion of the latter part of the amendment which I moved. His objection was that if the latter part of my amendment remained, it would nullify the earlier part of my amendment, namely, the obligation of the minister to follow the directions given in the Instrument of Instructions. Yes, theoretically that is so. There again the question that arises is this. How are we going to enforce the injunctions which will be contained in the Instrument of Instructions? There are two ways open. One way is to permit the court to enquire and to adjudicate upon the validity of the thing. The other is to leave the matter to the legislature itself and to see whether by a censure motion or a motion of no confidence, it cannot compel the Ministry to give proper advice to the President and impeachment to see that the President follows that advice given by the Ministry. In my judgment, the latter is the better way of effecting our purpose and it would be unfair, inconvenient, if everything done in the House is made subject to the jurisdiction of the court, so that any recalcitrant Member may run to the Supreme Court and by a writ of injunction against the Speaker prevent him from carrying on the business of the House, unless that particular matter is decided either by the Supreme Court or the High Court as the case may be. It seems to me that that would be an intolerable interference in the work of the Assembly. Even in England the Parliament is not subject to the authority of the Court in matters of procedure and in the conduct of its own business and I think that is a very sound rule which we ought to follow, especially when it is perfectly possible for the House to see that the Instrument of Instructions is carried out in the terms in which it is intended by the President and by the Ministry. Sir, I oppose this amendment.

Prof. Shibban Lal Saksena : What about nominated members being in the Cabinet?

The Honourable Dr. B. R. Ambedkar : I have dealt with that.

Mr. Vice-President : I shall now put the amendments one by one to vote.

The question is:

"That for clause (3) of article 62, the following clauses be substituted:

'(3) A member of the Cabinet shall not be liable to be removed except on impeachment by the House on the ground of corruption or treason or contravention of laws of the country or deliberate adoption of policy detrimental to the interests of the State.

(3A) The procedure for such impeachment will be the same as provided in article 50.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (1) of article 62, before the words 'and the other ministers', the 'words from the members of the party commanding a majority of votes in the People's House of Parliament' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That after clause (5) of article 62, the following new clause be inserted:

'5(a) In the choice of his Ministers and the exercise of his other functions under this Constitution, the President shall be generally guided by the instructions set out in Schedule III-A, but the validity of anything done by the President shall not be called in question on the ground that it was done otherwise than in accordance with such instructions.' "

The amendment was adopted.

Mr. Naziruddin Ahmad : There is an amendment to this amendment which should be put to vote first.

Mr. Vice-President : The question is:

"That in amendment No. 1329 of the List of amendments, in the proposed new clause (5a) all the words commencing with 'but the validity' to the end be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That after clause (1) the following new clause be inserted as clause (2) and the existing clauses be re-numbered:

'(2) In chosing his Ministers the President shall be generally guided by the instruction set out in Schedule 4 (A).' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That for clause (2) of article 62, the following be substituted:

'(2) The ministers shall hold office so long as they enjoy the confidence of the House of the People.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1319 of the List of amendments, for the words 'People's House of Parliament' (in the words proposed to be substituted), the words 'House of the People' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1319 standing in the name of Professor K. T. Shah.

The question is:

"That in clause (2) of article 62, for the words 'during the pleasure of the President' the words 'such time as they possess the confidence of a majority in the People's House of Parliament' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 49 in List IV standing in the name of Mr. Naziruddin Ahmad.

The question is:

"That in amendment No. 1320 of the List of amendments, for the word 'maintains' the word 'enjoys' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1320 standing in the name of Mr. Mohamed Tahir.

The question is:

"That the following be inserted at the end of clause (2) of article 62: 'and till such time as the Council of Ministers maintains the confidence of the Parliament.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 1322 standing in the name of Shri Mihir Lal Chattopadhyay.

The question is:

"That in clause (3) of article 62, after the word 'Council' the words 'of Ministers' be inserted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 1325 standing in the name of Mr. Mohamed Tahir.

The question is:

"That for clause (5) of article 62, the following be substituted:

'(5) A minister shall at the time of his appointment as such, be a member of the Parliament.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 1326 as amended by amendment No. 71 of List V as further amended by Shri Krishnamachari and Shri Kamath.

The question is:

"That in clause (5) of article 62, for the words 'for any period of six consecutive months is' the words 'from the date of his appointment, is for a period of six consecutive months', be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 1328 as modified by amendment No. 72 of List V.

The question is :

"That in clause (5) of article 62, for the words 'is not a member' the words 'is not an elected member' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1332 standing in the name of Prof. K. T. Shah.

The question is:

"That after clause (6) of article 62, the following new clause be inserted:

'(7) Every Minister shall, before he enters upon the functions and responsibilities of his office, make a declaration and take steps in regard to any right, title, corresponding to those provided in this Constitution for the President and Vice-President, and shall take an oath—or make a solemn declaration—in the presence of the President and of his colleagues in the following form.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 51 of List IV standing in the name of Mr. Kamath:

The question is:

"That for amendment No. 1332 of the List of amendments the following be substituted.

That after clause (6) of article 62, the following new clause be inserted :

'(7) Every minister including the Prime Minister shall, before he enters upon his office, make a full disclosure to Parliament of any interest, right, share, property or title he may have in any enterprise, business or trade, directly owned or controlled by the State, or which is in any way aided, protected or subsidised by the State; and Parliament may deal with the matter in such manner as it may, in the circumstances, deem necessary or appropriate.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 52 of List IV, standing in the name of Mr. Naziruddin Ahmad.

The question is:

"That in amendment No. 1336 of the list of amendments, in the proposed new article 62-A, the words 'Judge of the Supreme Court or of any High Court in any State in the Union' be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1336 standing in the name of Professor K. T. Shah.

The question is:

"That after article 62, the following new article be inserted:

'62-A. No one shall be elected or appointed to any public office including that of the President, Governor, Minister of the Union or of any State of the Union, Judge of the Supreme Court or of any High Court in any State in the Union, who—

(a) is not able to read or write and express in the English language; or

(b) within ten years from the day when this Constitution comes into operation, is not able to read or write or express himself in the National language;

(c) or who has been found guilty at any time before such election or appointment of any offence against the safety, security or integrity of the Union; or

(d) of any offence involving moral turpitude and making him liable on conviction to a maximum punishment of two years imprisonment;

(e) or who has not prior to such election or appointment, served in some public body, or down some form of social work, or otherwise proved his fitness, capacity and suitability for such election or appointment as may be laid down by Parliament by law in that behalf.' "

The amendment was negatived.

Mr. Naziruddin Ahmad : There is an amendment to this amendment. That should be put to vote first.

Mr. Vice-President : That was put to vote before. Probably, the honourable Member did not follow the proceedings closely.

The question is:

"That article 62, as amended, stand part of the Constitution."

That motion was adopted.

Article 62, as amended, was added to the Constitution.

Mr. Vice-President : We shall now pass on.....

Shri T. T. Krishnamachari : Mr. Vice-President, may I suggest that the House do take up article 67 in view of the fact that it is the desire of a number of Members of this House that these articles which relate to elections should be disposed of first, so that the election machinery might be got ready?

B. Pocker Sahib Bahadur : Mr. Vice-President, I very strongly object to the procedure suggested. As a matter of fact Members are entitled to know what is the order in which the business of the House would proceed. If all of a sudden, for the whim of any particular Member, some particular article should be taken at once, I submit, that it will put the honourable Members of this House to a great deal of inconvenience and it will be impossible for them to get on. Article 67 is a very important article and if that is to be dealt with first, it ought to be announced by you and honourable Members should have sufficient notice of such advancement and therefore, I strongly object to the suggestion made by my honourable Friend Mr. T. T. Krishnamachari.

Mr. Vice-President : I should like to remind honourable Members that the suggestion made by Mr. T. T. Krishnamachari cannot be given effect to without securing the permission of the House, which I would take in due course.

Secondly, so far as the technical objection is concerned, I should like to remind the honourable Member that in the agenda that has been sent, we have distinctly stated that a particular Part would be taken up. There is no such specification. Lastly, I should remind him that grouping of the amendments in question has been forwarded to honourable Members. That objection, I overrule.

The real objection is whether the House as a whole wishes to take up article 67. I should like to inform the House that it has been intimated to me that in several provinces the electoral rolls are almost complete and in some provinces the rolls have been completed. It is up to us to facilitate the passing of these articles because if any serious modification is made, then, the work of the provincial Governments would be seriously interfered with. We have to keep that in mind. But it is for the House to decide whether it will stand on its dignity and go on increasing the difficulties of the provincial Governments.

Pandit Hirday Nath Kunzru (United Provinces : General) : Sir, may I put a consideration before you in this connection? So far as I remember, the Drafting Committee has suggested an amendment to this clause. This amendment requires that instead of the proportion of elected seats assigned to the States in this article, the number assigned to each State should be substituted. I think therefore, that it would be desirable that this article should be taken up not now, but on Monday next. That would not involve practically any delay at all. We are very near one o'clock and as it is Friday, I suppose in accordance with our ordinary convention, the House will disperse at one o'clock.

Mr. Vice-President : Yes.

Pandit Hirday Nath Kunzru : If we take up the clause on Monday, we shall have time to consider the matter more fully and also to acquaint ourselves with what was done on a previous occasion in connection with the representation of the States here. We shall have time to consult Dr. Ambedkar himself on the point.

Mr. Vice-President : That seems a more reasonable objection. I am quite prepared.....

Mr. Naziruddin Ahmad : Sir, I have got a more important consideration to submit.

Mr. Vice-President : We shall now go on with article 62-A. We shall take up article 67 on Monday. In that connection, I would remind the House that there are other articles also dealing with election provisions. These are articles 149, 150, 289, 290 and 291. Information as to the way in which the various amendments are proposed to be grouped by me will be given to honourable Members in due time so that as soon as article 67 is finished, we can proceed to article 149, and then article 150 and so on.

Mr. Naziruddin Ahmad : Will that lead to acceleration of business at all? If article 67 is passed, it will not be operative because until we pass the whole Constitution after the third reading and it is signed by the President.....

Mr. Vice-President : We shall consider that question when we pass article 67. Probably, the ingenuity of some lawyers will be able to find some way by which we can obviate this difficulty.

Article 62-A

We come to articles 62-A and 62-B. Amendment No. 1338.

Prof. K. T. Shah : Sir, I beg to move:

"That after article 62, the following new article 62-A, be inserted:—

'62A. No one selected to be a Minister shall be a member of Parliament in either House, and if already a member of either House, he shall, before accepting the office of a Minister, resign his seat in the Legislature. The provisions of article 48-A shall apply to every Minister *mutatis mutandis.*

62-B. A Minister shall have the right to sit in either House of Parliament, and to address the House or any of its committees, at any time he deems necessary, but not vote on any issue coming before any such body.' "

[Prof. K. T. Shah]

Sir, may I say, before I commend this motion to the House, that this has arisen out of a scheme of amendments which I had in mind when I was proposing that the Executive or the Ministry should be separate from the Legislature and all organs of the State should be separate from one another. That having been rejected by the House, I wonder if it would be in order to move the first part of this motion.

Mr. Vice-President : Take the second part.

Prof. K. T. Shah : In that case I am proposing the second part that the Ministers should be entitled to sit and speak in either House no matter to what House originally they belong, or are elected to.

Pandit Thakur Dass Bhargava : May I point out that this is the subject matter of article 72?

Prof. K. T. Shah : Then I will move this at that time.

Mr. Vice-President : Shall we proceed to the next article or shall we adjourn now. Article 63 may not be finished today. I would like to have the whole of Monday for article 67.

Prof. Shibban Lal Saksena : We can finish article 66. It is a small one.

Mr. Vice-President : I do not want to start on a fresh article because that would interfere with our work on Monday, and I suppose from Tuesday we have some other business to engage our attention. I have got to inform the House that it is more than probable that we shall come to the end of our labours on the 8th January; but there will be a sitting on Saturday, the 8th January. A formal announcement will be made later but I am giving the information in advance so that honourable Members may not experience any difficulty in reserving their accommodation.

The House stands adjourned till ten a.m. on Monday next.

The Assembly then adjourned till Ten of the Clock on Monday, the 3rd January 1949.

CONSTITUENT ASSEMBLY OF INDIA

Monday, the 3*rd January* 1949.

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—*(Contd.)*

Article 66

Mr. Vice-President (Dr. H. C. Mookherjee) : Before we begin the work of the House, I am sure that honourable Members will agree with me if I ask them to stand for a minute in silence to show our gratitude to the Source of all life, and the Source of all energy whom we all worship in our different ways, that at last there has been this cease-fire arrangement at Kashmir.

(The Assembly stood for a minute in silence.)

Thank you all.

We shall begin our work today by taking up article 66 which has to be passed before we can pass on to article 67.

The motion before the House is :

"That article 66 form part of the Constitution."

Amendment No. 1353 to this article, standing in the name of Mr. Naziruddin Ahmad is disallowed as it is not substantive.

Nos. 1354, 1355 and 1358 are of similar import and No. 1355 may be moved. It stands in the name of Shri Brajeshwar Prasad.

(Amendments Nos. 1354 and 1355 were not moved.)

No. 1358 may be moved, standing in the names of Shri Lokanath Misra and Shri Mohan Lal Gautam.

Shri Lokanath Misra (Orissa : General) : Sir, I beg to move :

"That in article 66 the words 'and two Houses to be known respectively as the Council of States' be deleted."

If this amendment is accepted, the article would read like this:—

"There shall be a Parliament for the Union which shall consist of the President and the House of the People."

The effect will be that there will be no second Chamber to be called the Council of States.

Sir, I beg to submit that I am not against second Chambers on principle. But in the present temper of our people, and in view of the manner of the constitution of the second Chamber as has been envisaged in the Draft Constitution, I do not think there is any real need for the second Chamber, nor do I think that it will serve any useful purpose. Sir, so far as I have studied the Constitution and the constitutional precedents, it is now admitted almost on all hands that second Chambers are out of date. The only argument that is generally advanced in favour of such a chamber is that it will have a sobering effect on the decisions of the Lower House which is more representative of the people and that the people are now restive. I therefore submit that unless the manner of the Constitution of this second Chamber is changed and we are

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in a position to accept something which will be purely Indian based on Indian culture of deep, all-pervasive view and on Indian sentiment and temperament based and nurtured on our traditions which alone can have a sobering influence, the creation of an Upper House by itself will have no influence on the House of the People. But this is not to be and therefore I do not think there is a real need for the second Chamber. Its creation will only result in so much waste of public money and so much waste of time. I therefore submit that if the House is not prepared to change the Constitution of the second Chamber as proposed in the Draft Constitution, it will be much better for us to do away with the second Chamber altogether. I am glad that my own province of Orissa has already decided against a second Chamber and we are going to have only one Chamber. I do not think that without a second Chamber the country will be any the poorer for it, as now we stand.

Mr. Vice-President : Amendments Nos. 1356 and 1359 are of similar import. Begum Aizaz Rasul may move amendment No. 1356.

Begum Aizaz Rasul (United Provinces : Muslim) : Sir, I beg to move :

"That in article 66, for the words 'There shall be a Parliament for the Union which', the words 'The Legislature of the Union shall be called the Indian National Congress and' be substituted."

The Article will then read:

"The Legislature of the Union shall be called the Indian National Congress and shall consist of a President and two Houses to be known respectively as the Council of States and the House of the People."

Sir, my object in moving this amendment is that the word 'Parliament' may be substituted by a name which will convey to the people of India and to the world the name of the party that instituted the struggle for the freedom of the country. If the words 'Indian National Congress' are substituted for the word 'Parliament', the participation of the Congress in the national struggle will be permanently commemorated. This will also save the Congress from degenerating in course of time as all political parties are bound to do. It will liberate the Indian people from the glamour of the Congress and make it possible for them to exercise their vote democratically for otherwise the name of the Congress will unduly influence their emotions. This is more necessary because the Congress in the past was a movement rather than a party. It represented the Nation's urge to freedom and attracted people to suffering and sacrifice. Today, with its transformation into a party, it may become a happy hunting ground for political adventurers and successful black-marketeers.

The word 'Congress' is not new. It is used for the American Parliament and if adopted for India will certainly convey to the world the ideals and principles for which the Indian National Congress stands for. I therefore think that it is in the fitness of things that in this Constitution of India, the words 'National Congress' should be substituted for the word 'Parliament'. I hope that this suggestion of mine will receive the attention and sympathy it deserves. With these few words I move my amendment.

Mr. Vice-President : Now, in List I of the VI Week, amendment No. 1 standing in the name of Shri R. K. Sidhwa seeks to amend the amendment just moved. Mr. Sidhwa may move it. I see that Mr. Sidhwa is not in the House. The amendment is therefore not moved.

Prof. Shah's amendment comes next. Before I ask Prof. Shah to move I would like to know from Mr. Lari whether he wants amendment No. 1359 to be put to vote. I see that Mr. Lari is not in the House. Prof. Shah may now move amendment No. 1357.

Prof. K. T. Shah (Bihar : General) : Mr. Vice-President, I beg to move:

"That in article 66, the words 'The President and' be deleted."

The amended article would then read :

"There shall be a Parliament for the Union which shall consist of two Houses to be known respectively as the Council of States and the House of the People."

Sir, in presenting this amendment to the House I want to bring to its notice the fact that the clause as it stands is merely an imitation, and, in my opinion, an unnecessary imitation, of the British system where the king still forms an integral part of the entire Governmental machinery, the entire Constitution, and particularly of the Parliament. All the laws are made by "the King's Most Excellent Majesty, with the advice and consent of the two Houses". Justice is administered in the name of the king. The Post Office functions in the name of His Majesty. The army, the navy, all defence forces, all civil services are in the service of His Majesty.

That, however, is a state of affairs, which is not quite suited to, and should not be imitated in, this country's Constitution. The King-in-Parliament is not only a traditional institution; but has some solid constitutional foundation to rest on, such as, for instance, the large margin of Prerogative powers which the king exercises. No doubt, he exercises those powers on the advice of His Ministers, but they still reside in the King only.

In the case of the President in India, on the other hand, it is I think, a very misleading analogy to make him the Indian counterpart of the King in England. The comparison is, therefore, very misleading to make the President an integral part of the Legislative organ of the Indian Union.

The President would not only not have the Prerogative authority in all respects that the King has; it is in my view, the basic idea of this Constitution, unless I have grievously misunderstood it, that the President would be only a figurehead, who will act everywhere and every time only with the advice of his Ministers and with the advice of his Ministers alone. By himself he will be nothing but the ornamental head of the State.

If this conception of the President's place in our Constitution is correct, and 1 see nothing in the Constitution to contravene that view, then I submit that the inclusion of the President in article 66, making him an integral part of the Parliamentary machinery, is utterly out of place; and as such it should be avoided.

This Constitution, Sir, is not like the British Constitution growing up from age to age, from generation to generation, from century to century. It is a Constitution which has been made by the authority of the King making one concession after another, surrendering one prerogative after another foregoing one power after another or consenting to use it only on the advice of his Ministers. It is by the authority, and in the name of the people of India that the Parliament of India will function; and, as such, the President, even though the people's chosen representative, need not be—and should not be,—associated with the legislature as an integral part thereof.

I think a blind imitation of this kind of the British convention or British constitutional practice, carried to this extent, will only land us in difficulty. For the theory on which the British Constitution is formed is utterly different from that on which ours is based. The British Constitution is very largely based on convention and tradition. Large portions of these conventions are still unwritten and uncertified, leaving an indefinite margin for adoptation to circumstances. And those which have been written and codified are only the various legislative enactments of Parliament, which, however, themselves are founded only on accepted traditions, conventions or precedents.

In our case, on the other hand, we are writing this Constitution for the first time by our own efforts. As such for us to associate the President with our

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Parliament, in the same manner as the King is associated with the British Parliament is, I submit, utterly out of place.

I suggest, therefore, that these words should be deleted. Lest anybody should feel that this, again, arises out of my old idea and amendment about the separation of powers between the chief executive, the chief legislature, and the chief judiciary, let me assure you that that is no longer my submission now; and that that idea in no way affects this amendment now before the House. "The President" can very well be removed from this clause, without in any way infringing upon the doctrine of combined powers or collective responsibility on which this Draft Constitution is based. Accordingly I trust that this amendment will commend itself to the House.

(Amendments Nos. 1360, 1361, 1362, 1363 and 1364 were not moved.)

Mr. Vice-President : The article is now open for general discussion.

Shri M. Ananthasayanam Ayyangar (Madras : General): I am sorry, Sir, that I have to oppose all the amendments that have been moved. The amendments relate to three aspects. Number one and the most important of them seeks to restrict the scope of this article to the House of the People alone. That is, the mover of this amendment does not want an Upper House. Sir, it is common knowledge that in this country so far as we are concerned, there is so much enthusiasm and if for no other reason, we must find opportunity for various people to take part in politics. Therefore it is necessary that we should have another House where the genius of the people may have full play. The second reason is that whatever hasty legislation is passed by the lower House may be checkmated by the go-slow movement of the Upper House. The third reason is that the Upper House is a permanent body, while the Lower House is not. These are some of the reasons why, constituted as we are at present, it is necessary that in the interests of the progress of this country we should have a second House.

Then, Sir, so far as the name is concerned, there has been a suggestion that has been moved by my honourable Friend, Begum Aizaz Rasul and there is a similar amendment also standing in the name of Mr. Lari. Both of them want the name of the Parliament to be changed into the Indian National Congress. I appreciate their motives. It is the Congress which fought for the freedom of this country and therefore these friends who sympathise with the Congress, though they are not participants in this organisation, recommend that the name of this organisation should be associated with the name of the Parliament of the Union. However, laudable this may be, if it is accepted, it would lead to the accusation that a one-party government has been established in this country. The very same friends might say, "Look at what is happening. The Congress, the fighting organisation, has established a one-party rule in the country. It has even lent its name to the Parliament of the Union". If this suggestion is accepted, it may even prove to be the death-knell of the Congress, for it would no longer be able to function as a political party, to fight its way against the various reactionary political parties which are still raising their heads, mostly based on community and religion. Therefore, Sir, this is not at all acceptable.

Then, as regards the amendment moved by my honourable Friend, Prof. K. T. Shah, that the word 'President' should be removed and ought not to be associated in any shape or form with the administration of the country. I would ask him to refer to article 42 which has already been passed and where it is laid down that the executive power of the Union shall be vested in the President of the Republic to be exercised by him in accordance with the Constitution and the law. The President has been made a very important functionary in the whole scheme of things, and in the Constitution he is the chief executive

authority. Executive power is co-extensive with legislative power. Therefore it is not mere copying of the United Kingdom practice, but independently also we have to come to the same conclusion. Therefore it is necessary that the word 'President' should be retained. Otherwise, there will be a lacuna.

I submit, Sir, for the consideration of the House that the article as it stands may be accepted and that all the amendments should be rejected.

The Honourable Dr. B. R. Ambedkar (Bombay : General): I do not accept any of the amendments nor do I think that any reply is called for.

Mr. Vice-President : I shall now put the amendments one by one to vote. Amendment No. 1358. The question is:

"That in article 66, the words 'and two Houses to be known respectively as the Council of States' be deleted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1356. The question is:

"That in article 66 for the words 'There shall be a Parliament for the Union which' the words 'The Legislature of the Union shall be called the Indian National Congress and' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 1357. The question is:

"That in article 66, the words 'The President and' be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 66 stand part of the Constitution."

The motion was adopted.

Article 66 was added to the Constitution.

Article 67

Mr. Vice-President : We next come to article 67. The motion is:

"That article 67 form part of the Constitution."

Shri L. Krishnaswami Bharathi (Madras : General): Mr. Vice-President, I have an humble suggestion to make in the matter of producer when we deal with this article. You will be pleased to see that this article relates to the composition of the Houses of Parliament, the two Houses, namely, the Council of States and the House of the People. It contains nine clauses, and I would suggest that in the interest of clarity of discussion, this article may be split up into three parts: one relating to the composition of the Council of States—clauses (1) to (4); clauses (5) to (7) relate to the composition of the House of the People: clauses (8) and (9) are consequential, relating to both the Houses, regarding the census and the effect on the enumeration of the census.

I talked this matter over with Dr. Ambedkar and he himself said that he had marked it like that in his book, and that he proposed to make certain changes of transposition during the third reading. It may not be therefore quite possible straight way to split it at present, but I would request you to have all the amendments to the Council of States, clauses (1) to (4), taken together and discussions may be concentrated regarding them first, and the article may be kept open for amendments. After the discussion is over, you may put the whole clause together. All this I suggest in the interest of clarity so that when honourable Members deal with the Council of States they may confine their discussion on it and

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later on they may concentrate their discussion on the part of the article relating to the House of the People.

Mr. Vice-President : Have you anything to say, Dr. Ambedkar, regarding this matter, namely, the suggestion of Mr. Bharathi?

The Honourable Dr. B. R. Ambedkar : I am quite agreeable to the suggestion for the purpose of facilitating discussion.

Mr. Vice-President : Then we can take up the amendments in their particular order.

The first amendment is No. 1365. It is negative and is therefore disallowed.

Amendments Nos. 1366, 1367, 1379 and 1408 may be considered together.

Amendment No. 1366 may now be moved. It is in the name of Shri Mohan Lal Gautam.

Since he is not in the House, we pass over it.

The next amendment is No. 1367, in the name of Shri Lokanath Misra.

Shri Lokanath Misra : Since we have passed over amendment No. 1366, I do not want to move my amendment. It does not fit in now.

Shri M. Ananthasayanam Ayyangar : The question does not arise!

Mr. Vice-President : The next amendment is in the name of Prof. K. T. Shah—No. 1379.

Prof. K. T. Shah : Sir, I beg to move:

"That clause (2) of article 67 be deleted."

Clause (2) reads as follows:

"The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely:—

(a) literature, art, science and education;

(b) agriculture, fisheries and allied subjects;

(c) engineering and architecture;

(d) public administration and social services."

As the clause stands, Sir, it offends in my eye for two reasons. First of all, the element of nomination introduced here, however small, militates against the symmetry of the Constitution of our Legislative bodies. And it fundamentally mars the principle of election. I hold that with regard to both these chambers, in the way we are making this Constitution, the Legislative organ should be wholly elected and so the element of nomination should be completely excluded, however small it may be. Its being brought in, in this way, only affects, as I have said, the internal symmetry of the Legislative bodies. It must therefore, be avoided and excluded.

The second reason why I should not like this clause as it stands to be there in the Constitution is: that the various interests or elements selected by nomination are arranged in a somewhat mixed manner. It is not quite consistent intrinsically, logical or scientific.

For instance, "art" is mentioned separately and "science" is distinct—which it may very well be: "Engineering" and "architecture" are mentioned separately in another sub-clause. Now it is generally agreed that "architecture" is one of the fine Arts; and if that is so, I, for one, fail to see the reason of its separate mention, after you have mentioned the generic term "Art".

Moreover, "science, literature and education"—are mentioned each separately by name. These are, once more not logically divided one from another. There, again, I really fail to understand what should be the purpose of this separate enumeration. For, consider this. If by "education" it is intended to include both "Art and Science", through, let us say, such institutions as the Universities, I do not see why they should not be mentioned by their names as universities, and why they should be specifically stated, each apart from the other as Arts, Sciences, or Literature.

Literature again is usually included, at least in the University terminology, in the Fine Arts or in the Faculty of Arts. Accordingly to mention Literature, Science and Arts separately seems to be utterly incongruous, illogical and overlapping.....

Shri L. Krishnaswami Bharathi : May I submit that there is an amendment to be moved by Dr. Ambedkar? It is No. 1380. It deletes all these portions, and includes only Arts and Sciences with Social Service. If the honourable Member bears in mind that it is likely to be accepted, the discussion need not be concentrated on this matter. He may be pleased to see amendment No. 1380, wherein Dr. Ambedkar is to move the deletion of the whole clause and substitute only the four categories. So I may request you to ask the honourable Member to cut short the discussion.

Mr. Vice-President : Have you been able to understand the honourable Member?

Prof. K. T. Shah : I have quite understood the honourable Member's suggestion, but have certain points to advance, which I may, if I am allowed to, though I do not insist on it. I have seen Dr. Ambedkar's amendment; and I not only think that it is probably going to be accepted, but I know that it is certain to be accepted. Still I feel that there are points of view which this House might be freely allowed to hear, without such impatient attempts to smoother discussion. But if you do not wish it, I will not press my view.

Mr. Vice-President : Please go on.

Prof. K. T. Shah : Thank you, Sir. Take "Engineering". It is much more "Technology" or what used to be called in the United States Technocracy, which might be mentioned instead of Engineering. It would include much more than "Engineering". As it stands, it creates a needless anomaly.

Take yet another illustration, Social Services, which do not include public utilities presumably: and then again "Public administration". I for one do not understand what is meant by "Public Administration," in this connection of composing a legislative body. Is it intended to bring in the Civil Service? By common consent it is thought best to keep the Civil Service out of politics. Is it intended by "Public Administration" to bring in heads of departments, or their nominees? The old Indian Constitution gave a place to secretaries; but I think there is no room for them in the legislature now. Or does "Social Service" mean something different from "Education", because Education has been separately mentioned already? One would have thought that social service, among the most important of which is Education, would be represented through all the categories in the ordinary system of election, and would not need a special mention by itself. But if you must make special mention of it, then I do not see why you single out only Education. You use a general word like "Social Service"; and yet include only that, presumably because you mention it separately, and leave out "Health" which may also be mentioned separately.

Accordingly it seems to me that this classification is not quite logical. It also offends against the principle, at least in my eyes, of the symmetry of the

[Prof. K. T. Shah]

legislative body, by including in it the element of nomination. For these two main reasons I think the whole clause should be deleted, and substituted by something different which Dr. Ambedkar's amendment no doubt provides for to some extent; but does not provide for in the manner that I would have wished it to. As I would not have any right to speak on this amendment again, or take part in the general debate, I think it is just as well that the House should be put in possession of my point of view on the matter.

Mr. Vice-President : You may also move amendment No. 1408.

Prof. K. T. Shah : Sir, I beg to move:

"That Clause (4) of Article 67 be deleted."

Clause (4) of article 67 reads "the representatives of the States for the time being specified in Part II of the First Schedule in the Council of States shall be chosen in such manner as Parliament may by law prescribe".

Here, again, I take my ground on the principle of equality amongst the constituent States. Whatever may be the variety or the differences amongst themselves, in regard to area, population, resources, or whatever other criterion you select for judging of the importance of the several States, so far, at any rate, as you accept the principle of a Federal Union, you ought to make the States equal *inter se.*

On that basis I do not quite subscribe to the view propounded in clause (4) of the article, whereby it is left to Parliament to distribute the seats amongst the States, and not provided for in the Constitution itself. I have tabled another amendment which would suggest that the states should be represented equally in the Council of States, that is by the same number of delegates that any other State may have. On that ground also this clause seems to be superfluous, and I move that it be deleted.

(Amendments Nos. 1368 and 1372 were not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for clause (1) of article 67, the following be substituted:

'(1) The Council of States shall consist of not more than two hundred and fifty members of whom—

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representatives of the States.' "

The only important thing is that the number fifteen has been brought down to twelve.

Mr. Vice-President : There are six amendments to this amendment which I am calling out one by one. The first is amendment No. 2 on list No. 1 (Sixth Week) in the name of Mr. L. N. Misra.

Shri Lokanath Misra: Sir, I beg to move:

"That in amendment No. 1369 of the List of Amendments, in the proposed Clause (1) of article 67, for the word 'two' the word 'one' be substituted."

It comes to this that the council of States shall consist of not more than one hundred and fifty Members. In moving this amendment reducing the number to one hundred and fifty I have only one intention and it is this, that from our actual experience we find that such a huge number of people either in the House of the People or in the Council of States does not serve any very useful purpose. And we know that there is real difficulty in finding out so many Members who will be qualified and quite interested in such law-making. We see from the proceedings of this very House which consists of more than

three hundred Members that so few of us take real part in and are really useful to constitution making.

Mr. Vice-President : That is a reflection I can not allow.

Shri Lokanath Misra : I am sorry, Sir. It is no reflection. I therefore submit that instead of having two hundred and fifty Members it will serve the purpose of the second Chamber if we have one hundred and fifty Members. In that case there will be a saving of money and time. I therefore submit again that the number two hundred and fifty may be reduced to one hundred and fifty.

Mr. Vice-President : Amendment No. 3 of List I, standing in the name of Mr. L. N. Sahu may be moved.

Shri Lakshminarayan Sahu (Orissa : General) : (Began to speak in Hindi).

Mr. Vice-President: I wish only to make a request to the honourable Member. Many of our Members coming from South India do not know Hindi. Probably if he wants to convince them it would be better if he speaks in English. But he is at perfect liberty to speak in any language he wants.

Shri Lakshminarayan Sahu : No, Sir. I will speak in Hindi.

*[Mr. Vice-President I rise to speak a few words in support of the amendment which stands in my name and is now before the House. It is:

"That in amendment No. 1369 of the List of Amendments, sub-clause (a) of clause (1) of article 67 be deleted."

My reason for moving it is that we do not favour the system of nomination. The truth is that under no condition and in no place do we approve of it. Therefore, when we are framing our Constitution afresh we must consider very seriously whether we should do away with this system or not. My submission is that nomination in whatever place or form it may be—and I may add that indirect election is also a form of nomination—should be abolished.

I submit that we should consider with all earnestness the grounds, if any, which justify the original provision for fifteen nominated members of as amended now, for twelve nominated members. We should think why this provision for nominated members is made. Is it because they are so highly talented as to make us desire their presence as members in the said House? If that be so we can get such people from Universities—through election. I fail to understand what prevents this being done. My submission is that we should make some provision for the election of such talented persons who fail to get elected to the Legislature from the general constituencies. Unless we keep this in view, the Constitution that we are framing would not be to the liking of the majority. If we authorise the President to nominate these twelve members, he will always be accused of favouritism by quite a good number of people. People will complain that instead of nominating the right and able persons the President has nominated his own favourites. I am afraid that the danger of the President being subjected to unfair criticism would always be there. It is evident that it is the most undesirable thing that the Leader of our Nation, the Supreme Head of our Republic should thus be an object of unfair criticism. I would, therefore, submit Sir, that the provision for nomination be deleted and in its place Functional Representation be provided. It is said by some people that Functional Representation has been tried and found seriously defective in Ireland. But I submit, Sir, that it is bound to succeed if it is tried along with Panel System. I do not think that I need say much against the system of nominations, but in this connection I may draw your attention to the fact that till recently, we members of the Assemblies and Councils in India used to go to one person—Mahatma Gandhi—for advice and used to manage our affairs in the light of his advice. Even if there be any person who is as really great as Mahatma Gandhi

*[ ] Translation of Hindustani speech.

[Shri Lakshminarayan Sahu]

was, and for bringing in whom this system of nomination is being provided for and who is not willing to come in through elections, well we can go to him and have his advice. If there be any person of great learning or scholarship who may be unwilling to contest election, well, for myself I can say that I would feel no hesitation in going to him for seeking his advice. We used to go to Mahatma Gandhi for his advice. Similarly, if any able and competent person does not seek election, we may go to him and have his advice. We may constitute a board of such meritorious and learned persons to aid and advise us. The system of advisory board does exist in Russia. We may constitute an advisory board for every minister. Instead of doing what I have already suggested, if we authorise the President to nominate twelve persons, bitter allegations of favouritism and nepotism will be levelled against him and that would not be desirable. Therefore, I propose, Sir, that the provision of nomination should be totally deleted. With these words I resume my seat]

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I do not wish to move Amendment No. 5 of List I (Sixth week), because it is merely verbal. I therefore, confine myself to Amendment No. 4.

Sir, I beg to move:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'twelve members' the words 'not more than 6 per cent of the total number of members of the House' be substituted."

Shri S. V. Krishnamurthi Rao (Mysore): I suggest that this may be ruled out of order as the number originally fixed is 15 and the total number is 250. Six per cent will be again 15.

Mr. Naziruddin Ahmad : It would not be fifteen. I submit, Sir, that the original clause of article 67 was to the effect that the Council of States shall consist of 250 members. By the amendment moved by Dr. Ambedkar it now stands as *not more than* 250 members.

Mr. Vice-President : He says he seeks to fix the maximum; therefore, it is slightly different. You need not labour the point. He may go on.

Mr. Naziruddin Ahmad : In the new clause you make the House one of not more than 250 members. Therefore, by Dr. Ambedkar's amendment, the number of members in the Council of States would fluctuate. It may be less; it will never exceed 250. The number of nominated members should bear a proportion to the actual number of members in the House. This number should also fluctuate in proportion. I have, therefore, suggested 6 per cent which would be 15 only if the maximum number of members in the House is taken. Otherwise, if the number of members is less, the number of nominated members would also be less. They should, I submit, bear some relation to each other. In fact if the number be reduced to twelve, an arbitrary figure, that would bear no relation to the actual number. The actual number in the House may be considerably less. So, I think, Sir, a proportion of 6 per cent of the total membership of the House would be more convenient and more logical.

[Amendment No. 6 in List I (Sixth Week) was not moved].

Pandit Hirday Nath Kunzru (United Provinces : General) : Mr. Vice-President, Sir, it has just been suggested to me that it would be better if instead of moving my amendment now, I move it as an amendment to Amendment No. 1378, which is to be moved by Dr. Ambedkar. It is all the same to me, Sir, when I move this amendment. If you agree to the view that I have expressed, I can move this amendment a little later.

Mr. Vice-President : Yes; I agree.

I have admitted a short notice amendment standing in the name of Sardar Hukum Singh. It may be moved now.

Sardar Hukum Singh (East Punjab : Sikh) : Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'in the manner provided', the words 'from amongst the categories of persons illustrated' be substituted".

Sir, it might be thought that this is a very small affair; but I have to submit and I request that some attention might be paid to this, because I think there is some force in my amendment.

Amendment No. 1369 says that twelve members shall be nominated by the President in the manner provided in clause (2) of this article. According to this amendment, we should expect that some manner, which means method or mode of doing things, will be laid down in clause (2) of this article. But, when we look to this clause, there is no method or mode provided; no manner is provided there. What we find is that the members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in such matters as the following. Therefore, no manner or method is provided by this clause (2). Rather, there is a class of persons or categories of citizens and these categories or classes are illustrative, they are not exhaustive. They are described here as the categories from amongst whom the President shall nominate twelve members that are proposed to be selected under clause (1). My objection is that instead of putting in these words that these twelve shall be nominated by the President in the manner, it ought to be, from amongst the categories of persons illustrated in clause (2). This is the only amendment and I request that some attention might be paid to this.

(Amendment No. 1370 was not moved.)

Mr. Vice-President : There are three amendments which may be considered together, amendments numbers 1371, 1373 and 1374. Of these, the first seems to be the most comprehensive and may be moved.

(Amendments Nos. 1371, 1373 and 1374 were not moved.)

Amendments Nos. 1375 and 1376. Amendment No. 1375 may be moved. Amendment No. 1376 is identical with amendment No. 1375. So, I am not going to put it to vote. Amendment No.1375, Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-president, Sir, I beg to move:

"That the proviso to clause (1) of article 67 be deleted."

With your permission, Sir, may I also move amendment No. 1378? It is in substitution of this proviso.

Mr. Vice-President : Yes.

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That the following new clause be added after clause (1) of article 67 :

'(1a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B.' "

Mr. Vice-President : The amendment of Pandit Kunzru may now be taken up. It is amendment No. 7.

Pandit Hirday Nath Kunzru : Mr. Vice-President, Sir, I beg to move:

"That to clause (1a) of article 67 as now moved, the following words be added:

'Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not exceed the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States.' "

Sir, the proviso to clause (1) of article 67, the deletion of which has been moved by Dr. Ambedkar, runs as follows:

"Provided that the total number of representatives of the States for the time being specified in Part III of the first Schedule shall not exceed forty per cent of this remainder."

that is, forty per cent of the elected members of the Council of States. It has now been proposed by Dr. Ambedkar that as many seats in the Council of States should be allocated to the States specified in Part III of the First Schedule as may be laid down in Schedule III-B. We have not got this Schedule before us. We do not therefore know what proportion the representatives of the States mentioned in Part III of the First Schedule will bear to the representatives of the States included in Part I of the first Schedule.

Sir, during the Round Table Conference, the Rulers of the States insisted that they should be given greater representation both in the Assembly and in the Council of States than their population warranted. In other words, they asked for weightage in both the Houses of the Central legislature and it was therefore laid down in the Government of India Act, 1935, that the representatives of the States shall be forty per cent of the total representatives in the Council of States whether elected or nominated and that in the Assembly, the number of representatives of the States should be one-third of the total number of elected representatives. The Union Powers Committee recommended that the proportion of the representatives of the States mentioned in Part III of the First Schedule should be 40 percent of the total number of elected representatives in the Council of States. In other words, in this respect it approved of the provision contained in the Government of India Act, 1935, but it departed from that Act in regard to the representation of the States in the Legislative Assembly. The Draft Constitution follows the recommendations of the Union Powers Committee which were accepted by the House last year. Dr. Ambedkar has now moved that no percentage should be fixed for the representatives of the States specified in Part III of the First Schedule but that the seats allocated to the States should be as laid down in a schedule to be attached to the Draft Constitution. Now, Sir, when the Government of India Act, 1935, was passed by the British Parliament, the situation was very different from what it is now. The States were then not prepared to join the Federation except at a price. Apart from this, it suited the British Government to give weightage to the States. In the new order, however, the position of the States formerly known as the Indian States, has completely changed. Their representatives in this House themselves want that their position should be assimilated to that of the provinces. There is no reason therefore why the weightage given to the States in the Government of India Act, 1935, should be continued any longer.

Sir, I have already said that the Draft Constitution, so far as the representation of the States in the House of the People goes, has not adopted the provision relating to this matter in the Government of India Act, 1935. If honourable Members will turn to clause (5) of article 67, they will find that the proviso to sub-clause (b) of this clause lays down that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not be in excess of the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such

States. The Draft Constitution insists that the States shall be represented in the House of the People in accordance with their population. What I want is that in the Council of States the representation of the States specified in Part III of the First Schedule should also be fixed in accordance with the same principle. Sir, I may be told that as the Upper Chamber will be known as the Council of States, it means that the number of the representatives of the States specified in Parts III and Parts I and II cannot be fixed in accordance with their total population. If such an objection were put forward, I should regard it as purely superficial. Had I said that in the proviso to sub-clause (b) of clause (1) of article 67 for the word 40, the figure 25 or 30 should be substituted, no such objection could have been brought forward. I seek however to achieve the same purpose in a different way. My amendment cannot really therefore be objected to, on the ground that it would go against the principle that seems to underlie the composition of the Council of States.

Again, Sir, if honourable Members turn to clause (8) of article 67, they will find that it has been laid down there that "upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as Parliament may, by law, determine." This shows that population is to be taken into account in determining representation not merely in the House of the People but also in the Council of States. My amendment is thus in complete accord with the provisions of Clause (8).

Sir, I have moved this amendment because notwithstanding the new proposal made by Dr. Ambedkar it is not clear that the representatives allotted to the States specified in Part III of the First Schedule will not be 40 per cent of the total number of elected members of the Council of States or in excess of what their population entitles them to. It is true that it is not going to be laid down in so many words in the Constitution that the representatives of the States in Part III of the First Schedule should bear a fixed proportion to the total number of elected members in the Council of States but the allocation of the seats may be such as to bring this about in practice. I want to prevent this and to ensure that as between the States specified in Parts III and Parts I and II of the First Schedule, seats should be divided in accordance with their population. We have already done away not merely with separate representation in this Draft Constitution but also with weightage. If we have done away with weightage in the case of the various communities, there is no reason why we should retain it in connection with the representation of the States mentioned in Part III of the First Schedule.

For these reasons, Sir, I hope that my amendment will commend itself to my honourable Friend Dr. Ambedkar and therefore to the whole House.

Mr. Vice-President : Amendment No. 9 in List I, standing in the name of Prof. Saksena.

Prof. Shibban Lal Saksena (United Provinces : General) : Sir, I beg to move my amendment which is:

> "That in amendment No. 1378 of the List of Amendments, for the proposed clause (1a) of article 67, the following be substituted :
>
> '(1a) The allocation of seats to representatives of the States in the Council of States shall be based on the following principles:
>
> (i) one representative for every million population up to the first seven million population in each State in Schedule I, provided that no State shall have less than one representative in the Council of States,
>
> (ii) one representative for every two million population after the first seven millions.' "

[Prof. Shibban Lal Saksena]

Sir, I had, along with this amendment, given a chart showing the numbers of seats to be given to each of the States, and I do not know why it is missing here. In fact, when we were discussing the Report of the Constitution Committee, we had laid down that the maximum number of representatives from any province shall be twenty, and we laid down the numbers for each Province. The system then envisaged was not scientific or logical. I think that the numbers should be laid down on the basis of population up to a limit and that is why I have laid down the limit of one representative for every million up to seven millions, and after that, one representative for every two millions of the population. In this way, we can see to it that the bigger States have lesser numbers of representatives and the smaller States shall get a little weightage which we want to give them. That will be more scientific. Otherwise, it may be that the U. P. will have twenty seats, and Bihar also twenty. If the chart I referred to, and had been here, it would have made the position clearer, by showing what is the number of seats I would allot for each State. Sir, I submit the method I suggest is the proper method of distributing the seats and I request that it may be accepted by the House.

Mr. Vice-President : Amendment No. 10 of List I, standing in the name of Shri Phool Singh.

(Amendment No. 10 of List I was not moved.)

Amendment No. 11 of List I, standing in the name of Shri Lokanath Misra.

Shri Lokanath Misra : Sir, I beg to move :

"That in amendment No. 1378 of the List of amendments, in the proposed clause (1a) of article 67, for the words 'in accordance with the provisions in that behalf contained in Schedule III-B' the words 'on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than *three*' be substituted."

Sir, the idea I have in my mind, when I move this amendment to the amendment moved by Dr. Ambedkar is this. Since the Council of States is going to represent the States, it is but fair to the States units that these units should be dealt with as units and every unit is equally represented. Otherwise, there is no sense in saying that the States shall be represented in the Council of States. In fact, in the United States of America and in other countries where there are second chambers, representing the interests of the States, the representation given to these units is always the same. We also know that the elected members of our Council of States will be returned by the Lower House of the State Assemblies, and if we say that the election will be in some other form, either in proportion to their population or on some other basis and yet people with the same qualification, the Council of States will serve no real purpose, except a purpose of unnecessary duplication of the House of the People. In fact, the House of the People itself will be representative of the people of the States themselves, because the States will be sending in either representatives to the House of the People on almost the same basis. Therefore, if we do not accept this principle, that of taking every State as an equal unit, and sending in their representatives to safeguard or protect their special interests, there is no sense or meaning in having a Second Chamber to represent the States. Though we have Schedule III-B, the position, I feel, should be made clearer that the Council of States will be representative of the State interests, and therefore the States, as States, and as autonomous units, must be equally represented. On this ground, I suggest that the allocation of seats to the representatives of the State in the Council of States should be on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than three. Why I fix upon the figure three is this. I feel that if three members come from every State,

that will be sufficient to safeguard the special interests of the States, and their problems. After all, this is to be a sobering House, a reviewing House, a House standing for quality and the members will be exercising their right to be heard on the merits of what they say, for their sobriety and knowledge of special problems; quantity, that is, their number, is not of much moment, and I think three is just sufficient for the purpose.

Mr. Vice-President : Amendment No. 12 in List I, standing in the name of Shri Lakshminarayan Sahu.

*[**Shri Lakshminarayan Sahu :** Mr. Vice-President, my amendment runs thus:

"That in amendment No. 1378 of the List of Amendments after the proposed clause (1a) of article 67, the following new clause (1b) be inserted:

'(1b) Steps should be taken to see that, as far as possible, men from different units are represented.' "

The reason why I move this amendment is that in view of my previous proposal to delete clause 1(a) of article 67 it is necessary that a proviso be made that every member of the Council of States should come there only as a representative of some State. It is because of this that by this amendment I have sought to include a proviso so that representatives from each unit may be able to get into the Council of States. No mention has been made there of the number of representatives from each province and each unit and therefore, we do not have any idea as to the composition of the Council of States, I, therefore, entirely endorse the amendment moved by Pandit Hirday Nath Kunzru. The amendment moved by Shri Shibban Lal Saksena is, as I understand it, also intended to secure representatives in the Council of States for every State. But I find that there are three categories of States. It would be better if we could put all of them in a uniform pattern. It is quite possible that the small States which are neglected now-a-days and are unrepresented may later on desire to have representation in the Council of States. But there are many such small States as will have no opportunity of securing any seat in the Council of States in the ordinary course of things. It is for this reason that I am moving this amendment. I need not add anything further.]

Prof. K. T. Shah : Sir, I beg to move:

"That the proviso to clause (1) of article 67 be deleted and the following new clause be added after clause (1):

'(1a) Parliament may by law establish a Consultative Council of Representatives of Agriculture (25), Industry (15), Commerce (10), Mining, Forestry and Engineering (10), Public Utilities (5), Social Services (5), Economists (5), to advise Parliament and the Council of Ministers on all matters of policy affecting Agriculture, Industry, Commerce, Mining, Forestry, Engineering, Public Utilities and Social Services; and prepare or scrutinise proposals for legislation concerning any of these items.

Explanation.—The number given in the brackets after each group is the total number of representatives from each section.

Members of this Council shall have, individually or collectively no administrative or executive duties, functions or responsibilities. Every member of this Council shall be paid such salaries, emoluments or allowances as Parliament may from time to time provide.' "

Sir, this is an innovation, not borrowed, I can assure the honourable Chairman of the Drafting Committee, from any of the present Constitutions. Some thing similar to this was to be found in the now defunct Weimar Constitution of Germany; but even that precedent has been radically modified.

The suggestion here is three-fold : It is an advisory Council, consisting of certain special interests elected by organisations in those interests, like agriculture, forestry, mining, engineering, trade, industry, social services and so on.

Dr. Jivraj N. Mehta (Baroda) : May I know why Members of the Medical profession have been left out of the amendment?

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*[ ] Translation of Hindustani speech.

Prof. K. T. Shah : I would be very willing to accept an amendment to that effect provided you choose to move it. It is an oversight on my part, for which I personally apologise to you. My amendment, however, does not mention either the learned profession of law or the members of the Clerical Order. If the House desires to rectify the omission I have no objection. But I would like to make it clear that it is not so much any profession that is sought to be represented, as the various interests, or the various items in which the country as a whole is interested, and not the exclusive interest, in an economic sense, of those bodies.

Sir, this will be an advisory council which will have no executive or administrative functions according to the amendment I have tabled. It would advise in all matters on legislative proposals that may be coming up before Parliament, or which Parliament may direct them to scrutinise.

Sir, legislation is now-a-days becoming so extremely complex, so varied, and so numerous,—if I may speak individually or severally of the Acts passed by Legislatures now-a-days, that an average member of Parliament would find it extremely difficult to make up his mind, or even to understand the special provisions couched in technical language that grow up or that have to be sanctioned by Parliament.

It is becoming more and more a fine art, not merely in drafting the legislative proposals, which by itself is an extremely complicated task; but also in laying out the various items and satisfying the various interests that have to be provided for. It is even now a convention generally established and commonly followed, whereby the various interests not directly represented in Parliament can put forward their case before the Departments and make their own alternative proposal. Whether it is Insurance Legislation or Labour Legislation or Banking, or Shipping, or Trade marks legislation, those concerned see to it that their case is placed before the authorities. The Minister in charge of such legislation generally hears them before the final draft is made. If the Minister concerned does not so consult the interests concerned, then the Select Committee on the Bill sometimes hears representatives or representations from the interests concerned, before the legislation is passed by Parliament.

On this basis, I think it would be of the utmost benefit to have this consultation, not only to the interests concerned, but also to the proper co-ordination of the particular pieces of legislation with the rest of the social economic framework under which the country is to live. It does happen that, when individual items of legislation come up, only those concerned or interested specially, directly or personally, take any intelligent interest in the various clauses as well as in the general principle underlying; while the rest of the House,—by far the large majority,—remains relatively indifferent. Whether by the guidance of the Party organization, or by personal loyalties, votes are cast not so much by the provisions and their implications understood properly, but by influences of the kind I have just mentioned.

It is, therefore, not in the interests of proper legislation that we should have a body of laymen—and popular representatives are bound to be laymen only in the majority of cases in law-making that come up before Parliament—who should be passing laws, without any advice or guidance from recognised experts upon the complicated pieces of legislation which almost every year come before Parliament. They should have a non-interested, or dis-interested, and impartial body of advisers who are competent to advise by their study, training and experience in all such matters, who would have no executive or administrative function, who would not be law-makers themselves, and who would be sufficiently respected outside to influence the decisions in the best interests of the country. Sir, the practice is growing in many countries whereby Parliament passes organic laws, of great social importance, but allows more and more powers

to departments to make bye-laws, or rules under such laws, which enables the bureaucracy—I am not using the term in any objectionable sense, call it the permanent services,—to make elaborate codes under these laws. These codes are not enacted by Parliament. These codes are, no doubt, sometimes laid on the table of the House, in the presumption that members if they have any objections to the rules, will point them out. But as a matter of fact, these codes are scarcely ever scrutinised by members when once they are enacted under the authority of the law by the departments concerned and so they become laws by fiat of the bureaucracy without any proper understanding by members of Parliament.

This, Sir, is a practice which has led an eminent jurist, Lord Hewett, Chief Justice of the King's Bench Division in England, to describe it as The New Despotism. It really amounts to arming the civil services, arming the permanent officials, with a vast margin of power and discretion that practically amounts to a denial of civil liberties, or at any rate the ordinary freedoms of the citizen.

This, Sir, I submit, is not in the interests of the free institutions which we are planning for. I, therefore, suggest that it would be in the interests of the freedom of the people, and also the interests of sound legislation, that we should have a body of disinterested advisers chosen with an eye only to their experience training and qualification, and not burdened with any other duties as our Ministers are, not charged with any other administrative or executive functions and remunerated sufficiently to be beyond any influence other than the interests of the country, and so able to devote their entire time to the particular subjects that come up for legislation. I hope this amendment will be accepted.

Mr. Vice-President : Amendment No. 1380 standing in the name of Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I move :

"That for clause (2) of article 67, the following be substituted :

'(2) The members to be nominated by the President under sub-clause (a) of clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :

Letters, art, science and social services.' "

Mr. Vice-President : There are some amendments to this amendment which I am calling out one after the other. No. 13 in the name of Mr. Kamath.

(The amendment was not moved.)

No. 14 standing in the name of Mr. Lokanath Misra.

Shri Lokanath Misra: Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1380 of the List of amendments, in the proposed clause (2) of article 67, for the words 'special knowledge or practical experience' the words 'real knowledge of or actual devotion for', and for the words 'Letters, art, science and social services' the words 'History of ancient Indian philosophy and culture, art and science and social services towards reconstruction of Introspective India' be substituted."

Sir, I am really thankful to Dr. Ambedkar for introducing this amendment and for placing the words "Letters, arts, science and social services" much better than the original. In fact, in my humble opinion as I have conceived this Council of States, to me it represents our past, as the House of the People represents our present. Our future no doubt is in the hands of God. I say that we can have that sobering influence we need, only if we can build our mind and our ideas on our past. I suggest that India to be India must know her lofty past, and the members of the Council of States nominated by the President should be people who know our past, our history, our philosophy and our culture. Therefore, instead of having letters, let us say history, philosophy and culture. All our efforts should be towards one direction and that direction can only be an ideal

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which will bring up India to her past, *i.e.,* to her own. The nominated members by the President should represent these four things, and to bring home a justification of this point, I need not make a speech of my own. I will only quote some lines from an essay "India and the Western World" by Captain Anthony M. Ludovici (England). He says :

"We are credibly informed by anthropologists that often all that is needed for the ultimate extinction of a particular race is, not violence, disease, or some vicious habit introduced by the European, but merely the despondency generated by the imposition of new forms of behaviour and belief—a state of mind which by diminishing their zest and *joie de vivre*, undermines their will to survive.

Now, when we grasp how deep attachment to native culture-forms may be, even among the random bred stocks of Europe, need we be surprised to learn that among people whose capacity for change and for suffering change has a tempo different from our own, the impact of new and powerful culture, sometimes imposed rapidly with every artifice of proselytization, force and example has resulted in a complete renunciation of every hope, belief and desire.

* * * * * *

He (the European) was in a position to coerce recalcitrants and by means of the importunacies of his proselytizing and commercial agents, to provoke acts of hostility which often provided the excuse for retaliatory military measures. If, therefore, certain races survived the impact, not only as a united people, but also, above all, as a community still observing their traditional culture-forms, including the worship of the gods of their fathers the phenomenon partook of the nature of a feat so stupendous in recuperative power and stamina as to amount almost to a miracle—a miracle of resistance, faith and loyalty.

Well, we now know that, up to a point, India performed that miracle. Thanks to the relatively high evolution and intricacy of her own culture, her large population as compared with the numbers of her invaders, and above all, of the high intellectual level of her leaders, and their steadfastness as custodians of the people's cherished habits of mind and body, India should, in the millenniums to come, stand as a proverb and example among nations, as a country....."

Mr. Vice-President : How long do you propose to read this? It seems to have little connection with your amendment.

Shri Lokanath Misra: I will be short, Sir, it is relevant, as a foreign appreciation of what we are:

"as a country which, against forces almost everywhere else triumphant, contrived for centuries—in fact until the eve of the ultimate recovery of her freedom—to uphold and continue, without irretrievable loss, her own life and her own way of life."

Sir, I beg to submit, that in drafting this Constitution we dare not forget our own. The Council of States should represent our past and that could be done only by the President nominating only those who represent our great past of great intellectual fervour, high morals, deep and lofty flights of the spirit.

Mr. Vice-President : Amendment No. 15 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That in amendment No. 1380 of the List of Amendments, in the proposed clause (2) of article 67 after the word 'science' the words 'philosophy, religion, law' be inserted."

Mr. Vice-President : Why not move amendment No. 17 also? That too stands in your name.

Mr. Naziruddin Ahmad : I also beg to move:

"That in amendment No 1380 of the List of Amendments, at the end of the proposed clause (2) of article 67, the words commencing 'Letters, art, etc.' be numbered as sub-clause (a) of that clause and the following new sub-clause be added thereafter :

'(b) journalism, commerce, industries, law.' "

Sir, I beg to submit that the original clause (2) of article 67 contains a number of categories, representing different intellectual spheres from which members could be nominated by the President. In fact there is a number of

such items, namely, (a) literature, art, science and education: (b) agriculture, fisheries and allied subjects: (c) engineering and architecture: (d) public administration and social services. Of this long list, only three have been accepted in Dr. Ambedkar's amendment, namely, "art, science and social services" and a new item has been added, namely, "letters". I submit, Sir, that there is a danger in restricting the choice of the President in the matter of nomination to only four classes and rejecting the others. There is no reason why the choice should not be rather wide than restricted. However, my amendment (the first amendment which I have moved) wants to introduce Philosophy, Religion and Law. Sir, I submit that Philosophy is peculiarly Asiatic in origin. So is Religion. All the great Philosophies and all the great Religions emanated from the East. There is no reason why we should give up the Philosophers or the men who are the leaders of Religion. It is only the other day that at the instance of Mr. Kamath we introduced the name of Almighty in the constitution. In fact the President is to take the oath of office in the name of God. Having agreed to give the Almighty a place in the Constitution, I think that Religion which follows from God should also have some recognition in this Constitution. It is often hinted that Religion is a very bad thing and that it leads to quarrels. I submit, Sir, that Religion never leads to quarrels. It is communalism that leads to quarrels and not Religion. All the great Religions are really good and supply a fundamental moral basis for humanity to act. Therefore, Religion should not be discarded; so also with Philosophy. A philosophical attitude is particularly useful for a House like this; particularly when a Member finds that his amendments are not listened to or his speeches are not listened to by the Honourable the Chairman of the Drafting Committee, he cannot but be Philosophical. So for God's sake, do not discard Philosophy too.

Then comes the matter of Law. I submit, Sir, Law should also be represented. The legal talent of the Upper House should particularly be strengthened, because the Upper House will rather be a revising chamber and Law should be particularly represented. Men like Sir Tej Bahadur Sapru, Shri Alladi Krishnaswami Ayyar.....

Shri L. Krishnaswami Bharathi : Sir B. N. Rau.

Mr. Naziruddin Ahmad : Yes, Sir, B. N. Rau too. I am thankful for the suggestion. These are very useful names. I think their names should not be shut out from the choice of the President. It may be that at any future election we may lose Dr. Ambedkar himself, and there should be some means of bringing him in by a presidential nomination. Then there is the Rt. Honourable Mr. Jayakar. These are really great men of the Law and their addition, or rather the choice of the President in their selection should be very useful. In these circumstances they should also have some place.

Then with regard to the second amendment: I have also tried to introduce Journalism, Commerce, Industry and Law, Law has already been suggested in my previous amendment. With regard to Journalism, journalists have also a great duty to perform. In fact, they are a kind of go-betweens between the Legislature and the people and between the People and the Legislature. Ideas which are expressed in the legislature are disseminated by the journalists, and ideas which prevail among the people are also brought to the notice of the legislators by journalists. A democracy is run by the three States—the Executive, the Legislature and the Judiciary. To these must be added the newspapers which have been described as the Fourth State. They also play a very important part in the role of freedom of a country. Journalism should also be one of the categories from which the President could make his selections.

Then we come to Commerce. We want to associate those great commercial magnates who are really the wealth producers in the country and they

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should also be represented and their advice and counsel would be of great help. So also with Industry.

These are the different categories from which the selection should be made.

I submit that the introduction of these classes will not in the least compel the President to select or nominate anyone from any of them. The choice would be reasonably wide and I submit that this amendment should be accepted by this House.

In making the suggestion about Journalism, Commerce, Industry and Law, I took them from a suggestion made by a few learned lawyers who considered the Draft Constitution in the "Indian Law Review" of Calcutta. It is a quarterly journal. It is in volume 2 at page 9 onwards. There, with regard to this very clause of this article, they have suggested that Journalism, Commerce, Industry and Law should also be represented. They said that there is no reason why these important professions and callings should not be included as well. The great point which I wish to suggest to the House is that the choice should not be restricted, but should be widened. It would be an advantage to have different professions and callings in the list so as to make the choice of the President easier and better.

Mr. Vice-President : The next amendment in our list is amendment No. 16 in List No. 1 standing in the name of Mr. Sidhwa.

Shri R. K. Sidhwa (C.P. & Berar : General): I am not moving my amendment.

Mr. Vice-President : The next amendment is No. 18 in List No. 1 standing in the name of Shri B. Das.

Since Shri B. Das is not in the House we pass it over.

The next amendment is No. 1381. I find this is of similar import to 1383, 1384,1385 and right up to 1392. All these amendments may therefore be considered together.

Amendment No. 1381 standing in the name of Shri Prabhudayal Himatsingka may be moved.

Shri Prabhudayal Himatsingka (West Bengal : General): I am not moving my amendment.

(Amendment Nos. 1381 to 1394 were not moved)

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That for clause (3) of article 67, the following be substituted :

'(3) All members of the Council of States shall be elected. Each constituent State shall elect 5 members by votes of adult citizens.' "

Sir, this is in consonance with the general principle I am advocating, namely, that the Legislature shall be constituted only by elected representatives election being by whatever method you may agree to.

Secondly, that, in the Council of States, all constituent parts of the Union—call them States. Units or what you like—shall be equally represented. Whereas in the lower House, or the House of the People you may have representation in accordance with number, in the Upper House or the Council of States the representation is more of the territory of the Unit, of the special interests of the Unit or region, than of the people pure and simple.

And these, also, I would suggest should be elected rather than nominated, co-opted, or chosen by any other method. The whole body should be elected; and none but elected representatives should come there.

Next, the representatives, so far as they are representatives of the Units, should be equal in number amongst themselves—that is to say, for each State the same number be returned,—so that it will bring some sense of a real Federation working, rather than of discrimination or differentiation as between the Units. On these grounds I commend my proposition to the House.

Mr. Vice-President : Amendment No. 1396 is formal and is therefore disallowed.

(Amendment No. 1397 was not moved.)

Mr. Vice-President : The first part of amendment No. 1398. and amendment No. 1402 are identical. I can allow the first part of amendment No. 1398 to be moved.

Mr. Mohd. Tahir (Bihar: Muslim): What about the second part?

Mr. Vice-President : That will come at the proper place.

Mr. Mohd. Tahir : Sir, I beg to move:

"That in sub-clause (a) of clause (3) of article 67, the word 'elected' where it occurs for the second time be deleted."

I have moved this amendment because I think that there should not be any distinction between the elected members and the nominated members so far as the election of the representatives in the Council of States is concerned. Nominated Members, as soon as they become Members of the House, should enjoy all the rights and privileges of a Member as such.

I had moved a similar amendment in respect of the election of the President of India, but in that respect the House adopted that only the elected members should be allowed to vote for the President of India. In that case there was some meaning to it, because if a President who nominates certain members to Parliament again stands for the Presidentship election, there would have been some difficulty for the members nominated by the said President in exercising their votes. But so far as the election of the representatives of the Council of States is concerned, I do not think that there is any reason why the nominated Members of the Legislature as such should be debarred from voting in the election of their representatives in the Council of States. I hope that taking all these facts into consideration the House will accept my amendment.

Mr. Vice-President : Now you may move the second part of the amendment. They will be voted upon separately. Do you want amendment No. 1402, which is identical, also to be put to vote?

Mr. Mohd. Tahir : Yes.

Mr. Vice-President : You may move the second part of amendment No. 1398.

Mr. Mohd. Tahir : Sir, I beg to move:

"That in sub-clause (a) of clause (3) of article 67 the words 'Legislative Assembly' be substituted for the words 'Lower House'."

In this connection I would require the special attention of my honourable Friend Dr. Ambedkar. I have moved this amendment because in article 148 of the Draft Constitution the Legislative of the States has been defined as the Legislative Assembly and the Legislative Council; and there is no such term as has been suggested in article 67, that is to say, the 'Lower House'. In this connection I think my Friend Dr. Ambedkar was more conscious than myself because while we were discussing article 43 he introduced an explanation, namely, that "in this and the next succeeding article the expression'the Legislature of the States' means, where the Legislature is bicameral the Lower House of the Legislature." This explanation, Sir, he had to add while we were discussing article 43, which means that this explanation is meant for article 43 and article 44 only. Therefore, Sir, in order to clear the position in

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the article under discussion, I think there is no other alternative but to accept my amendment; or I would request my Friend, Dr. Ambedkar to introduce an explanation as he has done in article 43, because unless it is done, the meaning of the article will not be clear, and I hope, Sir, this would be duly considered and accepted by the House.

Mahboob Ali Baig Sahib Bahadur (Madras : Muslim): Mr. Vice-President Sir, I beg to move:

"That in sub-clause (a) of clause (3) of article 67, for the words `Lower House', the words `two Houses' be substituted."

The sub-clause as proposed to be amended by this amendment reads like this:

"67 (3) (a) where the Legislature of the State has two Houses, be elected by the elected members of both the Houses."

I do not see any reason, Sir, why, when there are two Houses in the Provincial Legislature, the elected members of the Upper House should be excluded from taking part in the election. I am not thinking of those who may be nominated to the Upper House. I am urging that those members of the Upper House who have been elected may be allowed to take part in the election. On principle, there is no reason at all why the elected members of the Upper House should be excluded. That is the reason why I move this amendment.

I have got one other amendment. No. 1407, Sir. I may be allowed to move that also.

Mr. Vice-President : There are three amendments of similar import. One is amendment No. 1400, the other is No. 1403 and the last is No. 1407. Amendment No. 1407 seems to me to be the most comprehensive. Mr. Baig can move that amendment.

Mahboob Ali Baig Sahib Bahadur : The other amendment that stands in my name is Amendment No. 1407.

Sir, I beg to move:

"That in clause (3) of article 67, the following new sub-clause (d) be added:—

'(d) The election under sub-clause (a) and (b) shall be in accordance with the system of proportional representation by means of the single transferable vote.' "

Shri Mahavir Tyagi (United Provinces : General): On a Point of order, there is a similar amendment standing in my name just before that of Mr. Baig. I have not been allowed to move that amendment.

Mr. Vice-President : Because the three amendments have been moved together, namely, Nos. 1400, 1043 and 1047, as the honourable Member will find by reference to papers already circulated and in my view, Amendment No. 1407 seems to be the most comprehensive. The honourable Member will have his chance later on.

Mahboob Ali Baig Sahib Bahadur : I am glad that some Members are of the same opinion as I am with regard to the method of election, particularly my honourable friend, Mr. Mahavir Tyagi, and I am glad when we come to this part of the Constitution Mr. Mahavir Tyagi has changed his mind. I remember quite well when I moved for the election of the President in the earlier part of the Constitution, Mr. Mahavir Tyagi was, I should say uncharitable.

Shri Mahavir Tyagi : That was the President's election this is of the Council of States.

Mr. Vice-President : I think it would be better to substitute the word "emphatic".

Mahboob Ali Baig Sahib Bahadur : Perhaps he did not understand. But now he finds that the method of election by a system of proportional representation by means of the single transferable vote is not injurious for the solidarity of the country. I remember at that time. . . . . .

Mr. Vice-President : May I suggest that instead of making remarks on the past attitude of Mr. Mahavir Tyagi, another honourable Member of this House, the honourable Member may proceed with his own amendment. Probably that would save the time of the House.

Mahboob Ali Baig Sahib Bahadur : Now, Sir, this House has already accepted the system of election under article 55, that is, in regard to the election of the President.

"The Vice-President shall be elected by the members of both Houses of Parliament assembled at a joint meeting in accordance with the system of proportional representation by means of the single transferable vote and the voting at such election shall be by secret ballot."

Therefore, Sir, there is nothing new or extraordinary in my proposing this method of election.

Further, Sir, may I refer to the opinions of certain authorities who are competent to speak on this matter which are referred to in the Constitutional Precedents, supplied to the Members of this House by the Constitutional Adviser? The opinions of persons who are competent to speak on this method of proportional representation are these:

"One of the best safeguards for minority rights and interests is the system of election by proportional representation with the single transferable vote (P.R.) which has already been adopted in a large number of countries; Switzerland is a conspicuous example:

> 'In the past there were bitter differences, religious and cantonal. But for a long period of years now, government has been stable. The responsibility for forming a government rests upon Parliament; its first duty is to elect an Executive. The Swiss Parliament is elected by proportional representation.' "

The late Lord Howard of Penrith, who was Britain's representative at Berne, Stockholm, Madrid and Washington, and who made a study of the working of governments, wrote as follows:

"Two fundamental requirements of democracy, first that Government should be an expression of the people's will and secondly that it should work both smoothly and stably and not be subject to frequent crises, seem to have been met more successfully by the Swiss system than by any other in the world."

Another authority has stated like this:

"Sir Samuel Hoare addressing his constituents in Chelsea expressed the view that representative Government might function more satisfactorily in Europe if the Swiss rather than the British form of Government was adopted. The New York review Free World organised an unofficial round table discussion on the future of Italy. In this discussion Colonel Raudolfo Pacciardi, an active member of the Left, said : 'The frequent crises of the Latin democracies, which have so greatly discredited representative democracy, can be avoided by a constitutional form like that which has been developed in Switzerland.' "

This was issued by the Proportional Representation Society in June 1945.

Therefore, this method of election represents the expression of the people's will and it will be more stable as well as responsible. My submission is that all the fears that some people might entertain that this method of election would involve the country in sections and it will go against the solidarity of the country are false. Some people who are really communally minded smell a rat in anything in regard to this kind of representation; that is unjustifiable. This is the most scientific and most democratic method of representing the people of a country in a democratic system of Government. I, therefore, commend these two amendments, firstly that the elected members of the

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Upper House also should be allowed to take part in the election and secondly that the method of election should be by this system, that is proportional representation by means of the single transferable vote. Sir, I move.

Mr. Vice-President : The other two amendments which have been dealt with together are amendment Nos. 1400 and 1403.

Shri Mahavir Tyagi: Sir, these are my amendments and I beg to submit that I may be allowed to move these amendments separately so that the House may decide on the issues separately.

Mr. Vice-President: Come to the mike please.

Shri Mahavir Tyagi: Sir, I beg to move:

"That at the end of sub-clause (a) of clause (3) of article 67, the following words be added:

'in accordance with the system of proportional representation by means of the single transferable vote.' "

Sir, while moving this amendment.

Mr. Vice-President : I am afraid I have not given the honourable Member permission to move his amendments. I want to know the reason why he wants to move them. They are of similar import as amendment No. 1407.

Shri Mahavir Tyagi: That is perfectly true. My reason is the House can decide the issue in one case in one way and in the other, in another way. Therefore. I want to give the fullest opportunity to the House.

Mr. Vice-President : I can give the honourable Member an opportunity of making his point in the general discussion; but I cannot depart from the convention which has already been established. His two amendments will be put to vote one after the other.

Shri Mahavir Tyagi: Shall I have my say now, Sir?

Mr. Vice-President : I shall certainly give the honourable Member an opportunity in the general discussion.

Mr. Vice-President: Amendment No. 1401, Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Mr. Vice-President, Sir, I beg to move:

"That at the end of sub-clause (a) of clause (3) of article 67 the word 'and' be added and the word 'and' at the end of sub-clause (b) be omitted."

I also beg to move amendment No. 1404:

"That sub-clause (c) of clause (3) of article 67 be omitted."

Sir, so far as this sub-clause is concerned, it introduces some anomalies. Clause (3) where this sub-clause occurs relates to the representation of the States. Sub-clause (a) deals with the representation of States having a legislature with two Houses. Sub-clause (b) deals with representation of States having a legislature with one House.

Mr. Vice-President : Mr. Naziruddin Ahmad, you might move amendment No. 1404 also.

Mr. Naziruddin Ahmad : Yes, Sir. That is the amendment which I have also moved.

Mr. Vice-President: And one speech.

Mr. Naziruddin Ahmad : Sub-clause (c) deals with representation of States having no legislature. States here comprise the Provinces, the Chief Commissioner's Provinces and the Indian States. All the Provinces, however, have legislatures and they will have legislatures too in the future constitution. Sub-clause (c) therefore really affects the States which are now called Indian States and the Chief Commissioner's Provinces. Where there is no legislature,

power is being given to the Parliament to prescribe or determine the manner of choosing their representatives. I submit this would be an encroachment on the rights of those States—specially the Indian States. These States having no legislature have a distinct identity, a modified kind of sovereignty. Dr. Ambedkar conceded the other day that they have some kind of sovereign rights, though not full sovereign rights. The mere fact that they have no legislature is no ground why their representation should be left to be determined by the Parliament. If they have no legislature for the time being there must be a President, or a Raj Pramukh or some authority who or which would function in the State. If the business of the State, its administration its executive and the judiciary and other matters could be carried on by some authority, that authority should also deal with the prescribe how the representatives of that States should come to the House. Therefore, this sub-clause is anomalous. Parliament may perhaps come in when there is a gap when there is really a constitutional vacuum in the State. The only void that is contemplated is the absence of any House of Legislature. There is not a political vacuum. But, still the State may have an organised Government without a legislature and their representation should really be a matter for them. It really is a question of the terms of the Accession. In fact, if a State having no legislature has acceded on certain terms, then sub-clause (c), to be valid, must come within those terms. As I see it, sub-clause (c) goes beyond the terms of Accession, and is an encroachment upon the sovereign or semi-sovereign rights of these States. I therefore submit that Parliament would not be entitled to deal with their representation. I would be beyond its competence. The States should be left to decide their own representation. In fact, it is due to them that they should decide their own representation. A legislature is desirable but by no means a constitutional necessity. The fact that they have no Legislature does not debar their expressing themselves as to how they will be represented.

In these circumstances, I submit that sub-clause (c) should be deleted. But I also feel that some appropriate provision recognizing the right of States themselves having no legislatures to determine their own representation may be substituted. In the shortness of time at my disposal I could not submit an alternative proposition but the question is one of principle. If the principle is acceptable to the House, a suitable substitute may easily be introduced. As at present advised, I submit that Parliament would not be a legal and constitutional substitute for the authority of the States whatever be the form of Government or the nature of the authority which really functions.

With these few words, I submit that my amendment should be accepted.

(Amendment No. 1405 was not moved.)

Mr. Vice-President : No. 1406 disallowed as verbal.

(Amendment No. 1409 was not moved.)

No. 1410 is disallowed.

I would like to put one suggestion before the House, before the general discussion begin. It is this. I have broken many of the Rules of Procedure, some through ignorance others deliberately. I am going to break a convention already established deliberately, but I think I ought to get the permission of the House. This article falls under two separate board divisions. The first four clauses deal with representation in the council of States and the last few provisions deal with representation in the House of the People. My suggestion is that first of all we discuss the first part, *i.e.,* the first four clauses dealing with representation in the Council of States. The amendments relating to these clauses have been moved one after another. Now I want to give an opportunity to honourable Members to take part in the general discussion on these four clauses. After that I intend to call upon Dr. Ambedkar to

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reply and after that only these amendments will be put to vote. Then we shall take up the amendments concerned with the clauses (5) onwards. Then the amendments will be moved, and then again a similar procedure will be followed. But this procedure is only for this clause. Have I the permission of the House?

Honourable Members : Yes.

Mr. Vice-President : Now these four clauses are open for general discussion. I call upon Mr. Rohini Kumar Chaudhari.

Shri Rohini Kumar Chaudhari: (Assam : General): Mr. Vice-President, Sir, I wish to say a few words on this article. My honourable Friend Moulvi Mohammad Tahir has moved an amendment objecting to the use of the word 'Lower House'. Practically speaking as is known to everybody, the lower House means really the Upper House. That is the House which has a more important voice and has the upper hand in the administration of the Province. Similarly the House of Commons is the House of the Commoners and the House of Lords is the House of the Lords. All the same the House of Commons exercises more powers than the House of Lords and nobody for a moment suggests that the name should be changed for that purpose only. Further more the use of the word 'Lower House' connotes that there must be an Upper House in the same province. Now so far as the Upper House is concerned, its members have been denied many privileges—for instance, one would have normally expected that in selecting or in electing members of the Council of States, their compeers, the member of the Upper House should certainly have a voice. Because after all the birds of the same feather flock together and there is a sort of sympathy between members of the Upper House in a province and the members of the Council of States in the Centre but, Sir, when you are not giving them the privilege which is exercised by the ordinary members of the Lower House or the Assembly, you must console them by calling them members of the Upper House. Therefore from that point of view also the words 'Lower House' should be allowed to remain where they are firstly because the lower House does not mean a House of Lower dignity but it has to be used for purposes of expediency; and secondly, Sir so long as we think that we must have a second legislature in a Province, there should be one which is called 'Upper House' because as a matter of courtesy we should call them Upper House because we are not giving them many privileges.

Then I also want to say a few words on the amendments of Prof. Shah. It is certainly democratic to expect that members of any House should be elected but there is one difficulty in the way. If you leave the representation entirely to election in a Council of States the class of people whom we want to nominate by this article, *i.e.,* the class of people who must have some special knowledge in agriculture, fishery, administration and social services, these people generally fight shy of election and will never be able to come to the House and therefore it is necessary in the exigencies of circumstances that some provision should be left for nomination so that the House may get the advantage of people who would normally not like to enter into a contest of election and at the same time whose services to the Legislature would be very useful.

With these words, Sir, I support the first part of the article.

Shri R. K. Sidhwa : Mr. Vice-Preisdent, Sir, this article so far as it relates to the Council of States contains two parts, one is clause 1(a) which has been amended by Dr. Ambedkar by reducing fifteen members which he had originally suggested for nomination to twelve members and in clause (2) where the Drafting Committee had suggested about 14 categories under which the

nomination had to be made, he has moved an amendment of 4 categories. Now this is the most contentious clause in this article, which ought to require the serious attention and consideration of the House. There is an election and also nomination in the clause. I have stood all along my whole life for election in all legislatures and public bodies and local bodies.

Not that I do not realise that conditions have changed today, but I do feel that even under the changed conditions, the power that is vested in the President may be misused, I mean the power of nomination. This, Sir, is a matter in which we cannot challenge the action of the President, because it is a matter which is absolutely within his discretion. A certain person 'A' may be more desirable to be nominated, but according to the President, another person, 'B' may be considered more suitable and he may nominate 'B'. The House cannot, and no one can challenge that choice or nomination of the President. No one can say that the President can be impeached because he has done something in bad faith or anything of that kind. I am afraid, Sir, that there will be a good deal of bickerings, that while able persons are available, some favourites, or some persons who are in the good books of the President or some persons who are always around the President, are nominated. Human nature being what it is, such a thing is quite possible. I am not stating something new, for persons above these things are exceptional. The President has to take into consideration so many factors when making his selection and at that time, qualifications or merit or service or sacrifices may be set aside or ignored. Therefore, I do feel that even these nominations should not be there, because they will lead to bickerings and out of them bickerings will accrue. The very fact that while the Drafting Committee had laid down something like fourteen categories, the Chairman of the Drafting Committee has now come forward with an amendment seeking to change the number to four, and also the number of amendments moved to this particular article show the degree of difference of views. One view is that experts will be required only for a few subjects such as law etc. which are rather technical. But it was asked, why have you left out health? Sir, I do not attach much importance to Law. There are many lawyers in this House, and some quite as competent as Dr. Ambedkar, if I may be permitted to say so. I am only saying that natural temptations will arise, and they are arising, as is shown by the various amendments that have been moved. Therefore, I feel, Sir, that these nominations, in the present juncture, should be done away with.

Coming to Prof. K. T. Shah's amendment I would certainly advocate the suggestion or rather the amendment moved by him proposing the appointment of advisory committees. I do not subscribe to his view completely. For instance, I do not agree with the various numbers and various other experts he has suggested, such as 25 for agriculture and so on. I do not subscribe to so many categories coming in. But certainly, I feel that there is scope for advisory committee of experts. For instance, we may require experts in civic life and also experts in Social life. We cannot ignore the civic service amongst the villages and local bodies. But I do not think such an advisory body should be provided for in the Constitution. In case nomination is to be there then as an alternative we may have these advisory committees on some two or three selected subjects. But that can be done by Parliament by enacting an Act. These persons need not be given undue prominence by making a provision in the Constitution for these advisory committees. According to the conditions that may be prevailing at an election, the Parliament may decide to have certain experts to be attached to particular ministries. But let the House itself be given an opportunity to find out from its own Members whether certain members with expert knowledge on particular subjects are available. If that is not possible, then Parliament can make a law to have Advisory Committees appointed. Sir, today you know we had to seek the advice

[Shri R. K. Sidhwa]

of economic experts in view of the serious economic conditions in the country. But such an outside body would not be quite desirable, if we are to get a completely unbiased opinion or advice. But if they are in the service of the State, as suggested, they can be trusted to give unbiased opinions.

I would, however, like to make it quite clear that I am opposed to nominations, and the above suggestion is only made as an alternative. We cannot take it, that because we have all been elected, therefore, nomination will be harmless. As I have stated, we cannot expect everybody to be of sterling character, though we wish all of us were of sterling character, and that when we decide upon a person, we do so without any favouritism or any other such considerations, and select the really best man for the place.

With this reservation, Sir, I support the article.

Mr. Vice-President : Shri Mahavir Tyagi.

Shri Mahavir Tyagi : Sir, I must thank you for giving mean opportunity to express my views on this article. I wanted to move an amendment, but you were pleased to rule that it has been already covered by an amendment.

Mr. Vice-President : Yes, your amendment Nos. 1400 and 1403.

Shri Mahavir Tyagi : Yes, Sir. I wanted to say that "in accordance with the system of proportional representation by means of the single transferable vote" may be added at the end of sub-clause (a) of clause (3) of article 67, and in the same manner, similar modifications may be made to sub-clause (b). But I have not much to say now. My Friend Mr. Mahboob Ali Baig has already moved an amendment which I think has the same purpose. But I think the words he has suggested will not fit in properly with the existing words, and I am afraid Dr. Ambedkar will have to take the trouble of setting right the whole sentence. Mr. Baig has suggested that a new sub-clause (d) may be added. Now, sub-clauses (a), (b) and (c) all form part of one big sentence. The sentence begins like this :

"The representatives of each State for the time being specified in Part I or Part III of the First Schedule in the Council of States shall.. etc., etc."

and then come sub-clauses (a), (b) and (c). If another sub-clause (d) is added, as suggested by my Friend Mr. Mahboob Ali Baig, it will read:

"(d) The election of the representatives of each State.... shall be in accordance with the system of proportional representation, etc., etc."

That will create a construction which is neither here nor there. I feel that my amendment is much more simple and does not lead to any such difficulties. I hope my suggestion will be considered by the House, because if it is accepted, then Dr. Ambedkar will not have to trouble himself about re-adjusting the wording of the article.

Sir, the Council of States will be represented by those members who are sent into the Council by the respective States, by general election, by majority voting, which means that the representatives of the States will not have any member belonging to the minority party of the respective States. It means that, if in the States the election is not by means of the single transferable vote, the minorities will have no representation at all in the Council of States. Sir, I do not agree with the type of democracy in vogue in Europe. This is the biggest fraud which the politicians of the world are unconsciously practising on the masses. Under the existing system of elections the masses do not get any real representation at all. All democracies based on party basis are the monopoly of the chosen few, the literates and the intelligentsia. They form parties and the elections are run on party lines. This being the case, the seats are held by the same set of people who are borne on the crest of the wave of emotion of the masses. The emotion of the masses is excited,

fanned and inflamed by the politicians. So much so, that when people go to the booth, they go swayed by the emotion created by the head of the election campaign. When an elector goes to the polling station, he is not his normal self. His emotions are excited and he forgets his individuality. Mass mind is a separate entity. When the elector votes under his emotions, he does not exercise his individual judgment. He is swayed by the election propaganda. Under the circumstances even the representatives of the majority party are not really representatives of the normal mind of the masses. It is only those members of the minority who are either defeated at the elections or have won that represent the real spirit of the masses to some extent. They are the only bold ones who have withstood the attacks, hits, and pushes of the majority party and who have kept their heads cool and aloof amidst waves of mass emotion created by election propaganda and stuck to their principles. So, those who belong to the minorities should be always cared for and looked upon as people who hold to their own opinions staunchly. Therefore, although democracy as practised in the western countries is a hoax and a fiction, it has survived so long because of the opposition. It is the opposition that reflects the true voice of the people. It is the opposition that sustains democracy. Were it not for this, democracy would have long ago crashed and fallen down. I believe in the democracy.....

Mr. Vice-President : The honourable Member's time is up.

Shri Mahavir Tyagi : Please give me one more minute, Sir. I assure you I shall be giving useful suggestions.

Mr. Vice-President : But the honourable Members is taking away the democratic right of others to speak.

Shri Mahavir Tyagi : According to Mahatma Gandhi real democracy is Ram Raj where everyone puts himself and all his power and possession under the supreme control of the general will. Each in fact becomes an indivisible part of the whole body, and indivisible member of the body. Although he acts according to the total will of the people as a whole, even so he obeys himself alone and maintains his freedom. Under such a democracy an attack on the individual is a hit on the total body of the people and a hurt on the total body is a hurt on each individual. We have, however, adopted the western model of democracy which I cannot help. There must therefore be parties in our body politics. Let us therefore give seats in the Council of States to some Members holding the views of the opposition also. Such members can get elected only if my amendments are accepted. Only then Members who are opposed to the party in power in the States can come in. Whenever high State policy is under discussion we can have the advantage of the views of the other side only if they are allowed to come in by this method. The Democracy of the western type is based on free play of the opposition. Without good opposition the democracy will become one legged, it would limp and tumbledown. With these words I hope that my amendments will be accepted.

Mr. Mohamed Ismail Sahib (Madras : Muslim): Mr. Vice-President, I want to say only a few words and will not take more than one or two minutes.

Under clause (2) of article 67, the different classes from amongst whom the President is to nominate members to the Council of States have been given. In the reason for omitting trade and commerce and industry, the Drafting Committee says that these people can as well come through the general election in view of adult suffrage. Sir, for the same reason you could have omitted to give representation by nomination also to the classes of the people enumerated in sub-clauses (a) to (d). They can also come through general elections under adult suffrage.

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Sir, I do not know that the importance of commerce is in any way less than the importance of the other classes of people enumerated in this clause. Therefore I think it is very reasonable and fair that trade and commerce also should be included.

Sir, now coming to clause (3), in the various sub-clauses, nominated members are being sought to be excluded from having anything to do with the election or the choice of representatives to the Council of States from the States. Sir, if no nomination is provided for at all, that is another thing and I would have no quarrel at all. But you think that nomination is necessary and are providing for the nomination of certain people. Then, when you have recognised the importance of nominating people and when you have actually nominated them to the Council of States, it will not do to discriminate against them. It will not be at all fair to place them at a disadvantage and give them an inferior status. When you have recognised their importance and nominated them, they must also be treated equally, after they have been nominated, with the other members who have been elected and who form part of the various bodies. Therefore I am not able to see the reason why these people should be eliminated from having anything to do with these elections.

Then, Sir, a word with regard to the system of proportional representation proposed in more than one amendment to this article. It is said that this system of election will lead to fissures and divisions amongst the People. But, in reality, it would not be leading to that result or effect at all, because people know that under this system of election every group of people has got an effective say in the election. Therefore every group will be drawn towards the other group. When it is a question of election they will be made to work with each other. They will be compelled to seek the franchise of every group. Therefore it will really bring the people together instead of disintegrating them. It will make each group seek the franchise of other people. Therefore it would really work for unity rather than for disunity. Sir, I think that the Chairman of the Drafting Committee would see the reasonableness of this proposal and would recommend to House the acceptance of this system.

Mr. Vice-President : Dr. Ambedkar.

(Pandit Hirday Nath Kunzru rose to speak.)

Mr. Vice-President : What is it that you want to say, Pandit Kunzru?

Pandit Hirday Nath Kunzru : I would like to say something about this question of proportional representation before Dr. Ambedkar rises to reply.

Shri L. Krishnaswami Bharathi : In the general discussion only two people have spoken so far, Sir.

Mr. Vice-President : On the whole four people have spoken. But I would allow you to speak, Pandit Kunzru, but please confine yourself to the question of proportional representation only.

Pandit Hirday Nath Kunzru : Mr. Vice-President, as it has been proposed that the members of the Council of States should be elected by the Lower Houses of the provincial legislatures, it is necessary that a system should be laid down for the election of the members as would be fair to men holding different views. It has accordingly been suggested that in their election the system of proportional representation by means of the single transferable vote should be used. Honourable Members may be afraid that, if this system is accepted, it would mean the introduction of communal electorates by the backdoor. We know the evils of communal electorates. We know that the partition of India is the direct result of such electorates.

We have therefore to be on our guard against any system of election that would lead to the maintenance of the old evil in a new form, but let us consider whether the acceptance of the suggestion that has been made would in practice amount to the election of the members of the Council of States by people belonging to separate communities. In order to clarify our minds, it is necessary for us to consider how the members of the provincial legislative assemblies will be elected. They will not be elected on the basis of communal electorates. The electorates will be mixed. They will have consist of men of all communities, and the men returned by mixed electorates are not likely to be imbued with communal virulence. It should not be supposed that the representatives of any community would be able to get in merely by the votes of the members of that community. They will have to seek the suffrages of mixed electorates and it may therefore be supposed—we may take it for granted—that if they want to maintain their position, if they want to be re-elected, they will have to follow a policy that is not based on religious or communal divisions. Now if we get such members in the Lower Houses of the provincial legislatures, is there any reason to fear that if the system of proportional representation by means of the single transferable vote were introduced for the election of the members of the Council of States, the evils of communal electorates would be maintained or intensified? Sir, we ought not to consider this question entirely from the point of view of the representation of different communities. We ought also to consider the need for the representation of persons holding views that are not popular, and the method of proportional representation would enable fair representation to be given to minorities holding views different from those of the majority. Unless the system of proportional representation is introduced, the views that are unpopular would never be represented. Take, Sir, the election of members to the Constituent Assembly. There are some members of this House who do not belong to the Congress and have yet been able to get elected. They have been able to secure their election because of the existence of the method of proportional representation with the single transferable vote for the election of the members of the Constituent Assembly. But for this system no one who was not a Congressman could have been here.

Maulana Hasrat Mohani (United Provinces : Muslim): Hear, hear.

Pandit Hirday Nath Kunzru : I think therefore that it is desirable that we should adopt the system of proportional representation by means of the single transferable vote in connection with the election of the members of the Council of States. I need not repeat that these members will be elected by provincial representatives who have not been returned on a communal ticket so to say. They will be elected by men who will owe their election to an electorate that will consist to an overwhelming extent of members of the majority community. There need be no reasonable fear therefore that the election of members of the Council of States by means of proportional representation would mean the reintroduction of communal electorates with all the evils that they involve. On the contrary, I think that in the changed circumstances this method would enable a fair representation of the views of sections that would otherwise be overwhelmed and would not be able to make their voice heard, to be secured.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, I am agreeable to amendment Nos. 1369, 1375, 1378, 1380, 1400 and 1403. With regard to the last two amendments (Nos. 1400 and 1403) those are also covered by an amendment moved by Mr. Mahboob Ali Baig. It is amendment No. 1407. I would have been glad to accept that amendment but unfortunately, no examining the text of that amendment, I find that it does not fit in with the generality of the language used in clause (3) of article 67. That is the only

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reason why I prefer to accept amendment No. 1403, because the language fits in properly with the language of the article.

With regard to the other amendments, I think there are only three which call for special consideration. One is an amendment by Mr. Kunhiraman. The aim and object.....

Mr. Vice-President : It was not moved.

The Honourable Dr. B. R. Ambedkar : Then I do not think I need say anything about it. There remain only two—one is the amendment of Mr. Kunzru. He was very naturally considerably agitated over the proviso which stood in the Draft Constitution and which provided for the 40 per cent representation to representatives of the States. I think it is desirable that I should clear the ground and explain what exactly was the reason why this proviso was introduced and what is the present position. It is quite true that in the Government of India Act, it was provided that although the States population formed one-quarter of the total population of India as it then stood in the Lower House, the States got representation which was one-third of the total and in the Council of States they got two-fifths representation which was 40 per cent. That is not the origin as to why this proviso was introduced in the Draft Constitution. I should therefore like to go back and give the history of this clause.

Members of the House will remember that this House had appointed a Committee known as the Union Powers Committee. That Committee recommended a general rule of representation, both for people in British India as well as people in the Indian States and the rule was this: That there should be one seat for every million up to five millions, plus one seat for every additional two millions. As I said, this was to be a rule to be applicable both to the provinces as well as the States. But when the report of the Union Powers Committee came before the Constituent Assembly for consideration, it was found that the representatives of the States had moved a large number of amendments to this part of the report of the Union Powers Committee. Great many negotiations took place between the representatives of the Indian provinces and the representatives of the Indian States Consequently, if honourable Members will refer to the debates of the Constituent Assembly for 31st July 1947, my friend and colleague, Mr. Gopalaswami Ayyangar, who moved the adoption of the Report of the Union Powers Committee, moved an amendment that the States representation shall not exceed 40 per cent. Now that rule had to be adopted or introduced in the Draft Constitution. So far as I have been able to examine the proceedings, I believe that this proviso of granting the States 40 per cent representation was introduced not so much with the aim of giving them weightage but because the number of States was so many that it would not have been possible to give representation to every State who wanted to enter the Union unless the total of the representation granted to the State had been enormously increased. It is in order to bring them within the Union that this proviso was introduced. We find now that the situation has completely changed. Some States have merged among themselves and formed a larger Union. Some States have been integrated in British Indian provinces, and a few States only have remained in their single individual character. On account of this change, it has not become as necessary as it was in the original state of affairs to enlarge the representation granted to the States, because those areas which are now being integrated in the British Indian provinces do not need separate representation. They will be represented through the provinces. Similarly, the States which have merged would not need separate representation each for itself. The totality of representation granted to the merged

States would be the representation which would be shared by every single unit which originally stood aloof. Consequently, in the amendment which I have introduced, and which speaks of Schedule 3-A, which unfortunately is not before the House, but will be introduced as an amendment when we come to the schedules, what is proposed to be done is this:

We have removed this 40 per cent ratio granted to the States and there will be equality of representation in the Upper Chamber, both to the Indian States as well as to the Provinces, and I am in a position to give some figures, which, although they are not exact for the moment, are sufficient to give a picture of what is likely to be the contents of Schedule 3-A.

According to Schedule 3-A, the provinces will have 141 seats. The Chief Commissioners' provinces will have two and the States will have seventy altogether. Consequently, the total of elected members to the Upper Chamber will be 213. Add to that twelve nominated seats. That would bring the total to 225. Our clause, as amended, says that the total strength of the Council of States shall not exceed 250. You will thus see that the allocation of seats which it is proposed to make in Schedule 3-A satisfies two conditions, in the first place it removes weightage and secondly, it brings the total of the House within the maximum that has been prescribed by the amendment that I have made. I think the House will find that this is a very satisfactory position.

Pandit Hirday Nath Kunzru : May I ask my honourable Friend whether the States in Part III of the first Schedule have been represented in accordance with their population?

The Honourable Dr. B. R. Ambedkar : Yes, everybody will now get population ratio.

Then I come to the second amendment—No. 1377 by Prof. K. T. Shah. Prof. K. T. Shah proposes that there should be a council of the representatives of agriculture, industry, commerce and other special interests created by statute. It will be a permanent body of people. The States shall be required to give them salaries, allowances, and the duty of this council, as proposed by Prof. K. T. Shah, is that it shall have the statutory duty of giving advice to Government, and the Government will have the statutory obligation of consulting this body, and it shall not be permissible for the Government, I take it, to introduce any measure which on the face of it does not bear the endorsement that the statutory body has been consulted with regard to the contents of that Bill. I believe that is the purpose of Prof. K. T. Shah's amendment.

There are various objections to this. In the first place anyone who has held any portfolio in the Government of India or in the Provincial Governments will know that this is the normal method which the Government of India and the Provincial Governments adopt before they finalise their legislative measures: there is no proposal brought forth by the Government of India in which the Government of India has not taken sufficient steps to consult organised opinion dealing with that particular matter. It seems to me that this provision which is a matter of common course is hardly necessary to be put in the Constitution. I therefore think that from that point of view it is unnecessary.

Then I should like to tell the House that it is proposed that at a later stage I should bring in an amendment which would permit the President to nominate three persons either to the Council of States or to the House of the People who shall be experts with regard to any matter which is being dealt with by any measure introduced by Government. If it is a matter of commerce, some person who has knowledge and information and who is an expert in that particular branch of the subject dealt with by the Bill, will be appointed

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by the President either to the Council of States or to the Lower House. He shall continue to be a member of the legislature until the Bill is disposed of; he shall have the right to address the House, but he shall not have the right to vote. It is through that amendment that the Drafting Committee proposes to introduce into the House such expert knowledge as the Legislature at any particular moment may require. That justifies, as I said, the rejection of Prof. K. T. Shah's amendment; and also the other amendments which insisted that the other clauses of this article requiring that agriculture, industry and so on be also represented, become unnecessary. Because, whenever any such expert assistance is necessary, this provision will be found amply sufficient to carry out that particular purpose. Honourable Members might remember that in the 1919 Act when Diarchy was introduced in the Provinces a similar provision was introduced in the then Government of India Act which permitted provincial Governors to nominate experts to the House to deal with particular measures. Sir, I suppose and I believe that this particular proposal which I shall table before the House through an amendment will be sufficient to meet the requirements of the case.

Shri R. K. Sidhwa : Will the nomination clause remain?

The Honourable Dr. B. R. Ambedkar : Yes.

Mr. Vice-President : I shall now put amendment No. 1379 to vote. The question is:

"That clause (2) of article 67 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That clause (4) of article 67 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1369 of the List of Amendments, in the proposed clause (1) of article 67, for the word 'two' the word 'one' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1369 of the List of Amendments, sub-clause (a) of clause (1) of article 67 be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words 'twelve members' the words 'not more than 6 per cent, of the total number of members of the House' be substituted."

The amendment was negatived.

Mr. Vice-President : I shall put the short notice amendment of Sardar Hukam Singh to vote. The question is:

"That in amendment No. 1369 of the List of Amendments, in sub-clause (a) of the proposed clause (1) of article 67, for the words, 'in the manner provided' the words 'from amongst the categories of persons illustrated' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That for clause (1) of article 67, the following be substituted:

'(1) The Council of States shall consist of not more than two hundred and fifty members of whom—

(a) twelve members shall be nominated by the President in the manner provided in clause (2) of this article; and

(b) the remainder shall be representative of the States'."

The amendment was adopted.

Mr. Vice-President : I shall put amendment No. 1375, standing in the name of Dr. Ambedkar, to vote.

It reads:

"That the proviso to clause (1) of article 67 be deleted."

Shri L. Krishnaswami Bharathi : On a point of Order, Sir. Amendment No. 1375 is out of order in view of the fact that we have already adopted amendment No. 1369 which is a substitution of the clause including the proviso. The proviso has been omitted now by the acceptance of the new clause. There is no point in having an amendment about something which is not in existence.

Mr. Vice-President : Then I shall not put it to vote.

Mr. Vice-President : The question is:

"That to clause (1-a) of article 67 as now moved, the following words be added:

'Provided that the ratio of the total number of representatives of the States for the time being specified in Part III of the First Schedule to their total population shall not exceed the ratio of the total number of representatives of the States for the time being specified in Parts I and II of that Schedule to the total population of such States'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1378 of the List of Amendments for the proposed clause (1-a) of article 67, the following be substituted:

'(1-a) The allocation of seats to representatives of the States in the Council of States shall be based on the following principles:

(i) one representative for every million population up to the first seven million population in each State in Schedule I, provided that no State shall have less than one representative in the Council of States;

(ii) one representative for every two million population after the first seven million'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1378 of the List of Amendments, for the proposed clause (1-a) of article 67, for the words 'in accordance with the provisions in that behalf contained in Schedule III-B' the words 'on the basis of equal representation to each of the component States, the number of which representation shall in no case be more than *three*' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1378 of the List of Amendments, after the proposed clause (1-a) of article 67, the following new clause (1-b) be inserted :

'(1-b) Steps should be taken to see that, as far as possible, men from different units are represented.' "

The amendment was negatived.

Mr. Vice-President : The question is :

"That the following new clause be added after clause (1) of article 67 :

'(1-a) The allocation of seats to representatives of the States in the Council of States shall be in accordance with the provisions in that behalf contained in Schedule III-B'."

The amendment was adopted.

Mr. Vice-President : The question is:

"That the proviso to clause (1) of article 67 be deleted and the following new clause be added after clause(1):

'(1-a) Parliament may by law establish a Consultative Council of Representatives of Agriculture (25), Industry (15), Commerce (10), Mining, Forestry and Engineering (10), Public Utilities (5), Social Services (5), Economists (5), to advise Parliament and the Council of Ministers on all matters of policy affecting Agriculture, Industry, Commerce, Mining, Forestry, Engineering, Public Utilities and Social Services; and prepare or scrutinise proposals for legislation concerning any of these items.

Explanation.—The number given in the brackets after each group is the total number of representatives from each section.

Members of this Council shall have, individually or collectively, no administrative or executive duties, functions, or responsibilities. Every member of this Council shall be paid such salaries, emoluments, or allowances as Parliament may from time to time provide'."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1380 of the List of Amendments, in the proposed clause (2) of article 67, for the words 'special knowledge or practical experience' the words 'real knowledge of or actual devotion for', and for the words 'Letters, art, science and social services' the words 'History of ancient Indian Philosophy and Culture, art and science and social services towards reconstruction of "Introspective India" ' be substituted respectively."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in amendment No. 1380 of the List of Amendments, in the proposed clause (2) of article 67, after the word 'science' the words 'philosophy, religion, law' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in amendment No. 1380 of the List of Amendments, at the end of the proposed clause (2) of article 67, the words commencing 'Letters, art, etc.' be numbered as sub-clause (a) of that clause and the following new sub-clause be added thereafter:

'(b) journalism, commerce, industries, law.' "

The amendment was negatived.

Mr. Vice-President : The question is :

"That for clause (2) of article 67, the following be substituted :

'(2) The members to be nominated by the President under sub-clause (a) of Clause (1) of this article shall consist of persons having special knowledge or practical experience in respect of such matters as the following, namely :

Letters, art, science and social services.' "

The amendment was adopted.

Mr. Vice-President : The question is:

"That for clause (3) of article 67, the following be substituted :

'(3) All members of the Council of States shall be elected. Each constituent State shall elect 5 members by votes of adult citizens.' "

The amendment was negatived.

Mr. Vice-President : The question is :

"That in sub-clause (a) of clause (3) of article 67, the word 'elected' where it occurs for the second time be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (3) of article 67, the word 'elected' where it occurs for one second time be deleted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (3) of article 67, the words 'Legislative Assembly' be substituted for the words 'Lower House.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (3) of article 67, for the words 'Lower House' the words 'two Houses' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (3) of article 67, the following new sub-clause (d) be added:

'(d) The election under sub-clauses (a) and (b) shall be in accordance with the system of proportional representation by means of the single transferable vote.' "

The amendment was negatived.

Mr. Vice-President : The question is:

"That at the end of sub-clause (a) of clause (3) of article 67, the following words be added:

'in accordance with the system of proportional representation by means of the single transferable vote.' "

The amendment was adopted.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (3) of article 67, after the words 'of that House' the words 'in accordance with the system of proportional representation by means of the single transferable vote' be inserted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That at the end of sub-clause (a) of clause (3) of article 67, the word 'and' be added and the word 'and' at the end of sub-clause (b) be omitted."

The amendment was negatived.

Mr. Vice-President : The question is :

"That sub-clause (c) of clause (3) of article 67 be omitted."

The amendment was negatived.

Mr. Vice-President : It thus appears that there are altogether 5 amendments which have been carried, namely Nos. 1369, 1378, 1380, 1400 and 1403.

I am now in a position to make a formal announcement to the House that we definitely adjourn from the 8th of this month, but we do sit on the 8th Saturday. The House now stands adjourned to 10 A.M. tomorrow.

The Assembly then adjourned till Ten of the Clock on Tuesday, the 4th January 1949.

CONSTITUENT ASSEMBLY OF INDIA

Tuesday, the 4th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—*(Contd.)*

Article 67—(*Contd*.)

Mr. Vice-President (Dr. H. C. Mookherjee): Before we begin the business of the House, I have to inform honourable Members that yesterday information was received that members of the R.S.S. would somehow secure entrance into the lobbies and galleries in order to create disturbance. Fortunately, this was prevented. May I request honourable Members to issue visitors' cards for those only who are personally known to them in order that we may proceed with our business without any interruption?

We shall now take up discussion of article 67. The first amendment on the list is amendment No. 1411. This is disallowed as being verbal.

Then we have amendments Nos. 1412, 1413 first part, 1414 first part and 1415 first part. These are identical. Amendments 1415 standing in the name of Kazi Syed Karimuddin is allowed to be moved.

Kazi Syed Karimuddin (C. P. Berar : Muslim): Mr. Vice-President, Sir, I move:

"That in sub-clause (a) of clause (5) of article 67, the following words be deleted:—

'Subject to the provisions of articles 292 and 293 of this Constitution';

and the following words be added at the end :—

'in accordance with the system of proportional representation with multi-member constituencies by means of cumulative vote'."

Sir, the present electoral system, of single member constituency according to me, is very defective. The one pervading evil of democracy is the tyranny of the majority that succeeds in carrying elections. To break off that point is to arrest danger. The common system of representation perpetuates the danger and the only remedy is proportional representation. That system is also profoundly democratic for it increases the influence of thousands of those who would have no voice in the Government and it brings men more near an equality by so contriving that no vote shall be wasted and that every voter shall contribute to bring into Parliament a member of his own choice and opinion. Sir, another objection to the present electoral system is that the system does not even guarantee the rule of majority. We have innumerable instances of this type in England and America. The Conservative majority of 1924 was unreal because it polled 48 per cent of votes and it was supposed to be the majority party in the country. Then in America, Presidents Hayes and Harrison became Presidents in 1876 and 1888 when they secured votes less than the votes secured by their adversaries. In so far as this is concerned, the present electoral system is really perverse. This system may even deprive the minorities of their just share of

[Kazi Syed Karimuddin]

representation as to render them important. An instance of this has happened in the Irish election. The most ardent defenders of the system would hardly deny the right of the minority to some representation and it is worthy of note that one of the reasons advanced by Gladstone was that such a system tended to secure representation for minorities. This is found to be wrong in Ireland; yet as prophesied in the debates of 1885, the minorities in the South and West of Ireland have since that date been permanently disfranchised. In the eight Parliaments of 1885 to 1911 they had been without representation. Therefore my submission is that the present system as it stands does not guarantee a majority rule as people commonly suppose and does not guarantee a representation to minorities, not necessarily religious, even the political minorities. Today we are faced with an electoral system in which there is no guarantee except the reservation of seats that has been embodied in articles 292 and 293. By my amendment I plead that if proportional representation is guaranteed the reservation of seats even on religious grounds must go. It has been accepted on all hands that communalism must be uprooted from the soil of this country. We have has had evil effects of it and the Dominion Parliament is already committed to this stand because a Resolution has been already passed that no communal party may be allowed to function in the country. Therefore separatism, communalism and isolationism must disappear from the body politics of India but we cannot ignore the existing conditions in the country. We find that there is a movement for the establishment of a Hindu Raj. We find that there is an R.S.S. organisation also in the country. In view of this we have to proceed cautiously and gradually, and therefore we have to find out a way that communalism must go and the minorities must be represented in the legislatures.

Now there are two methods before us. One is the reservation of seats as has been provided in the Constitution, *i.e.* under article 292. The other is proportional representation. There are very serious defects about the provision of reservation of seats because it is based on religious grounds. It defeats the very objects for which it is adopted because the chosen representatives of the community for which reservation is given cannot be secured. then as I had already said in the general discussions, that even a false convert for the purposes of election will defeat a choice representative and the minorities will be engaging lawyers who would argue the cases against their own clients; but it is wrong to say that it is communal because it is the majority that would elect the representatives of the minorities mainly and not the minority communities.

The system which I regard as the best is the system of proportional representation. It is not based on religious grounds and it applies to all minorities, political, religious or communal. There are three objections to this system, which are generally argued and debated. The first is that there would be very large constituencies and it would be very difficult to manage the voters. The second objection is the instability of the Government and the third is the establishment of Coalition Governments. Now in regard to the first objection, I think it is not tenable at all. In a large constituency if the party system works, then there is no question of the candidate coming in contact with the voters. The party machinery would work successfully. It is wrong to suppose that there will be instability of Government because the majority is bound to secure majority in the House and the majority is bound to form a Government. Then about the Coalition Government, in my opinion, where there is heterogenous population, it is very necessary that we should have Coalition Governments. It will not be a bad thing that various representative elements should have to be consulted in forming a Ministry. The country is passing through transition and Communism is knocking at our door. It is very necessary that

the opposition whether it is communal or it is a political will have to be accommodated. We are about to transfer the Government of this country from the middle classes to those whom I might describe as the wage-earning class. This is an immense change which is realised by very few people in the country. The Congressmen are of opinion that they are bound to sweep the polls and therefore they support the Draft Constitution which establishes a majority rule, making no effective provisions for the benefit of either communal or political minorities in the country. They are wrong and they would be found to be wrong. No organization in the world has reconciled the conflicting claims of labour and capital, tenant and landlord and it is impossible to keep them under one banner. Look around us, communism is spreading with alarming speed and once it catches the imagination of the working classes, its potentiality is very grave. Suppose the working classes take a fancy for socialist dogmas or communist dogmas, they being in majority, are bound to capture power in absence of any provision to protect political or communal minorities. In order to provide against such contingencies the system of proportional representation is the only method. Secondly without any sacrifice of democratic principles, it can afford protection to communal minorities also. Without any spirit of communalism representatives of political and communal minorities can be elected. In the absence of this, the country can be plunged into communism.

Shri L. Krishnaswami Bharathi (Madras : General) : Sir, may I request the honourable Member to read slowly?

Kazi Syed Karimuddin : I am not reading. I am only referring to my notes. You can come here and see it for yourself.

Mr. Vice-President : Mr. Karimuddin, I suggest you speak more slowly.

Kazi Syed Karimuddin : Sir, in the general election and according to the present electoral system if the pendulum swings in favour of communism, all schemes of development will be lost and if it swings in favour of communalism, the secular nature of the State will be lost; and if the minorities are neglected, whether they are political, or communal, and crushed and kept out of Parliamentary activities, it will be a good fodder for the communists and they will sit in their lap. Therefore, it is part of wisdom to persuade the opposition to take of the ways of constitutionalism and the only way to do it is the introduction of the system of proportional representation. I prophesy that if this is not done, it will lead to chaos. That does not mean that I oppose the continuance of the present regime. I want the Congress to live longer because they have given peace, tranquility and a secular State to all the communities in India but this cannot be guaranteed unless the system of proportional representation is introduced.

Now, Sir, the first part of my amendment says that there should be abolition of the provision of reservation of seats in case the proportional representation is granted; otherwise not. Sir, in fact when I spoke about the abolition of reservation of seats and adoption of proportional representation, there was an incorrect idea that I was pleading for the abolition of reservation of seats unconditionally. I had stated and I state even today that if proportional representation is introduced, there should be no provision regarding the reservation of seats. Once you accept that there are minorities and also that some recognition has to be given to them, then my submission is that the House should be pleased to introduce the system of proportional representation.

Mr. Vice-President : Then amendment No. 1412 which stands in the name of Mr. Mohd. Tahir. Do you want it to be put to vote Mr. Tahir?

Mr. Mohd. Tahir (Bihar : Muslim): No, I do not want to move it.

Mr. Vice-President : Well in that case the amendments to that amendment, that are Nos. 19 and 20, standing in the name of Pandit Thakur Dass Bhargava fall through. But do you want to move them, Mr. Bhargava? I find that they relate to not only amendment No. 1412, but to other amendments also.

Pandit Thakur Dass Bhargava (East Punjab : General) : Sir, though I do not want to move those amendments, with your permission, I would like to make a statement about them.

Mr. Vice-President : You can do so in the course of the general discussion. I shall bear that in mind. So I score them out. Then we come to amendment No. 1413, standing in the name of Pandit Lakshmi Kanta Maitra.

Pandit Lakshmi Kanta Maitra (West Bengal : General): I am not moving it Sir.

(Amendment No. 1414, first part was not moved).

Mr. Vice-President : Then we come to the second part of No. 1414, second part of 1415 and No. 1421. These are of similar import and may, therefore, be considered together. Amendment No. 1415 may be moved. It stands in the name of Kazi Syed Karimuddin; I am referring to the second part of No. 1415.

Kazi Syed Karimuddin : Sir, I have moved both parts of No. 1415.

Mr. Vice-President : All right. I am sorry I did not follow. Then No. 1414 falls through, as Mr. Lari is absent. Then we come to amendment No. 1416 and amendment No. 1417, amendment No. 1416 stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah (Bihar : General) : Mr. Vice-President, Sir I beg to move :

"That in sub-clause (a) of clause (5) of article 67, for the words 'not more than five hundred representatives of the people of the territories of the States directly chosen by the voters' the words 'such members as shall, in the aggregate, secure one representative for every 500,000 of the population in all the constituent parts of the Union, whether States or territories directly administered by the Centre. All members of the People's House shall be chosen directly by the votes of adult citizens. The votes shall be cast in a secret ballot and voting shall be on the basis of Proportional Representation with Single Transferable Vote' be substituted."

Sir, by this amendment, I seek to make, three changes.

The first is to avoid a maximum number of representatives being fixed by the constitution for the People's House of Representatives. It is, I think, not in accord with the correct principle of popular representation that it must be the people's voice which must be the final authority in the governance of a country calling itself a democracy. Under such a principle the Constitution should not fix permanently the maximum number of representatives for the popular chamber.

We have observed the tendency, during the last three or four census, towards a steady increase of the population of our country at every decennium. The last census shows an increase of as much as 15 per cent in ten years. If, now, you fix the absolute maximum number, it would happen that you might change the number of persons represented by each representative in an undesirable direction. That is to say, the representative character of each representative would become lesser and lesser, as he would be representing larger and larger numbers.

I feel, Sir, that if you make representation of very large numbers of voters to be concentrated on a single member, So to say, you may not have a correct

verdict of the people on a multiplicity of issues that are usually placed before the electorate at a general election.

A general election—and that is presumably contemplated here—is always an occasion when a number of issues come before the voters, in which the people, that is, the voters are likely to be confused, because of the varying, and often conflicting, pulls of the different issues on which they are asked to give each a single vote. This being the unavoidable case at each such election, I think it may be as well to fix no maximum number of representatives for the representation of the people. Instead we should allow the number to shape itself according to the varying population.

It is true that if your census is a decennial affair, it may not give you the correct guide for every election in the interval between two censuses assuming that elections come at least once in five years, if not more frequently. Even so, since we have agreed to take the last preceding census as the basis, and that census is now more than eight years old—apart altogether from the originally doubtful character of that census taken during the war,—the next general election may itself be not correctly representing all people, especially if you fix a maximum number of representatives to start with. In other later general elections, the five-year interval would not make so great a variation. That variation may be about 5 per cent or 6 percent or $7^1/_2$ per cent. This only means that representatives would number so many more on that amount of change, it may not be impossible for a proper electoral machinery to cope with.

Taking that to be the case, I would suggest that a limit of 500,000 population be fixed as being entitled to be represented. This would be much more likely to reflect the real opinion of the people, even on a number of issues, than if you fix the total number of representatives at 500 as is contemplated under this clause. The number would, no doubt, increase, if the population tends to increase. It is therefore, possible that the maximum for the coming two decades may reach the figure of, say 600, or even more. Even with that number, I do not think that, for a country of the size and population of the Union of India, it is too large a number of representatives.

Anybody interested primarily in expediting things, and in governing the country according to a few people's will naturally not like large numbers of deliberation, and the larger the time taken in passing laws or resolutions, representatives. The larger the number the greater, of course, is the chance, of deliberation, and the larger the time taken in passing laws or resolutions. The scrutiny of government's executive actions would also be from a greater variety of angles by interpellations and the like. Those, therefore, in favour of expediting public business may not quite like this suggestion.

Those, on the other hand, who think more of the people and their wishes, would not, and should not, find in this, in my opinion, a hindrance or handicap to good government. The possibility of varying or increasing number of representatives should not, by itself, be regarded as an objection. In fact, even in the clause as it stands, the very idea that you think it necessary to fix the maximum number of representatives indicates that, even in this scheme, there is a possibility of variation in number; and as such, my amendment is, by itself, not to be condemned.

My second point is in relation to the scheme of voting. There are, in later clauses, some other amendments which I have tabled, and which when they come up, I will discuss. I will, therefore, not take up the time of the House at this moment.

As regards the scheme of voting, I only insist that voting should be by secret ballot, by adult citizens; and that it should be by means of a scheme of Proportional Representation under the device of the single transferable vote. I do not propose to descant at length, upon the theoretical grounds in favour

[Prof. K. T. Shah]

of Proportional Representation or against it, as the previous speaker has placed a fairly exhaustive case before you. I would only like to add, lest I should be misunderstood, that the principle of Proportional Representation is not intended so much to perpetuate communal minorities, as to reflect the various shades of political opinion which after all, should be reflected in your Legislature, if you desire to be really a demarcatic government. The French system for instance, strictly speaking, is not based on Proportional Representation; and yet, different shades of political opinion are reflected in the French Assembly. Even so French Governments in the third Republic had an average life, it is said, of perhaps not more than eleven months. On that count, however, the principle is not necessarily to be condemned, as the public opinion of all shades gets a chance of expression and there is in it, if not greater stability, at least greater reflection of popular will than would be the case in a system of absolute vote that is apparently contemplated here.

The possibility of securing varying shades of political opinion will give a chance not only for minorities to be only reflected in the Legislature of the country but also for them to assert themselves, and to convert themselves into a majority, which perhaps, those who might confuse Proportional Representation as synonymous with the possibility of communal representation would do well to consider. On these grounds, Sir, I commend this motion to the House.

Shri H. V. Kamath (C.P. Berar : General) : Mr. Vice-President, I move, Sir :

"That in sub-clause (a) of clause (5) of article 67, for the words 'representatives of the people of the territories of the States directly chosen by the voters', the words 'members directly elected by the voters in the States' be substituted."

The clause as it appears in the Draft Constitution reads thus :

"(5) (a) Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters."

If my amendment is accepted by the House, the clause will read thus:

"Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred members directly elected by the voters in the States."

The House will see that my amendment makes for brevity, clarity and precision and further, seeks to eliminate the convolutions of language which mar the construction of the clause as it stands at present. I do hope that Dr. Ambedkar and the House will not have any difficulty in or objection to accepting it. I will only say one word more. If my amendment is accepted by the House, certain consequential changes will follow in sub-clause (2) of clause (5) and in the proviso thereto. In the sub-clause as well as in the proviso, the words "representatives of the States" will have to be altered to 'members' in conformity with the amendment which has been moved to sub-clause (a) of clause (5). I commend this amendment to the acceptance of the House.

Mr. Vice-President : Amendments Nos. 1418, 1419 and 1420 are of similar import. I allow Prof. Ranga to move amendment No. 1419.

(Amendments Nos. 1418 to 1423 were not moved.)

Prof. K. T. Shah : Mr. Vice-President, I beg to move:

"That the following be added after the words 'the States' in sub-clause (b) of clause (5) of article 67 :—

'and Territories directly governed by the Centre'."

Sir, the existing clause provides only for those States which are mentioned in the Schedule attached. The Schedule does not mention considerable territories, with considerable population in them, which are directly administered by the Centre. Lest their claim to representation be overlooked altogether and they be denied representative institutions in themselves, and go without representation at the Centre also. I think it is but proper and necessary specifically to include them in this clause.

It has been alleged, and I have heard it said on very high authority, that the people of some of these territories, of a given area now administered directly by the Centre, are so backward, so lacking in education and the country so undeveloped, as not to deserve representative institutions at all. The remark I am referring to was made at the Jaipur sessions of the Congress with special reference to Cutch.

I was, I confess, surprised to hear such a sweeping condemnation being enunciated by such high authorities in respect of a territory such as Cutch, which is being directly administered by the Centre. Sir quite a good proportion of the business enterprise and industrial activity of the city of Bombay has come from the Cutch people settled there. It is true that those Cutch people have more or less become permanent citizens of Bombay, though they retain their connection with the State of Cutch and may, under the changed conditions of today well make substantial contribution to the rapid advancement of the area and its inhabitants today. But that is no reason to calumniate the whole province or State as lacking in education, development, enterprise or understanding of the resources, or the possibilities of the State.

This, Sir, is, in my opinion, very unfair to a whole people who have made their contribution to the country's general awakening and advance. To deny the people there, on such grounds, representation either in the State itself, or in the Centre as part of the Union, is highly re'rograde say the least.

The possibility therefore, of other similar territories being also ignored and going unrepresented has become so vivid in my mind, that I have felt it necessary to table this amendment and specifically to include them in this clause with the words that I have suggested being added. I commend this to the House.

Mr. Vice-President : The first part of amendment No 1425 and amendment No. 1426 standing in the name of Mr. Kamath are identical. I propose that amendment No. 1425 may be moved, the first as well as the second part. Mr. Kamath, do you want your amendment No. 1426 to be put to vote?

Shri H. V. Kamath : I see that Dr. Ambedkar has stolen a march over me, and so I do not propose to move my amendment.

Mr. Vice-President : Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : I am not moving it.

Mr. Vice-President : Then we come to amendment No. 1427 standing in the name of Prof. K. T. Shah.

Prof. K. T . Shah : Amendments Nos. 1428 and 1429 also stand in my name. Can I move all these together?

Mr. Vice-President : You can move them one after the other. After moving all the three amendments, you can make one speech covering all of them.

Prof. K. T. Shah : Mr. Vice-President, Sir, I move :

"That in sub-clause (b) of clause (5) of article 67, the words 'divided, grouped or' be deleted."

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies', the following be added:—

'so that each State being constituent part of the Union, or Territory governed directly by the Centre is a single constituency by itself if its population is not less than a million; or grouped with such adjoining States or Territories as together have a population of not less than a million.' "

"That is sub-clause (b) of clause (5) of article 67, after the word 'constituencies' a full-stop be added; the word 'and' following immediately be deleted; and the word 'the' be printed with a capital 'T'."

Sir, the purpose of these amendments is consequential upon what I have already moved; that is to say, we should form constituencies in such a manner that each constituency has at least the representative possibility of two seats not less than a million, population, therefore, is the limit which I would suggest should be the unit in the device of Proportional Representation by which representation is to be secured.

Proportional Representation, Sir, would not be feasible or even possible for single member constituencies. At any rate it will not yield the same results as are expected by those who believe in the principle. It is but right therefore, and proper that you should have multi-member constituencies; and the minimum must not be less than two.

It is on that basis, and this understanding of the principle we have already adopted in the Constitution of this very assembly, that I have suggested a unit of a million population. I have also suggested, in a previous amendment, the minimum population requiring representation to be 500,000. These two together, I think, would provide every constituency with not less than two representatives.

Most of the States will be able, each by itself, to provide such constituencies. There will, of course, be some States which will be much larger; and as such the working of Proportional Representation would in them fit in very successfully. All States as well as territories governed from the Centre would by this means receive their full measure of representation. It would enrich the representative character of the Union Legislature; it would provide expression for all shades of opinion, it would help to place before the Union Legislature; all aspects of the problems that come before it for legislation or otherwise for disposal.

As I have stated already, I think it is but right and proper that we should have constituencies arranged or grouped in such a manner, formed in such units, as would secure the fullest possible representation on a Proportional Representation basis for every constituent part of the Union which may also enable every shade of political opinion to be represented. Sir, I commend this to the House.

(Amendment No. 1430 was not moved.)

Shri H. V. Kamath : May I make a submission, Mr. Vice-President? I thought that Dr. Ambedkar was moving his amendment No. 1425 and so I said that my amendment would not be moved. It appears that Dr. Ambedkar is not moving his amendment. His amendment consists of two parts and he has not separated the two. Therefore, will you kindly permit me to move my amendment No. 1426?

Mr. Vice-President : All right.

Shri H. V. Kamath : Mr. Vice-President, I move Sir:

"That in sub-clause (b) of clause (5) of article 67, the words 'of India' be deleted."

Sub-clause (b) of clause (5) as it appears in the Draft Constitution reads as follows:—

"For the purpose of sub-clause (a), the States of India shall be divided, etc."

Now, obviously the words 'of India' are redundant and superfluous, and in my judgment they should be deleted because the States in the Draft Constitution always mean the States of India. Therefore, Sir, I move that the words 'of India' should be deleted in this sub-clause, and if this is accepted, the sub-clause will read as follows:—

"For the purpose of sub-clause (a), the States shall be divided, etc."

This is quite clear. There is no need for me to expatiate upon this point. I commend his amendment to the House for its acceptance.

Prof. K. T. Shah : Mr. Vice-President, Sir, I move:

"That the proviso to sub-clause (b) of clause (5) of article 67 be deleted."

This, is consequential, Sir, from the previous amendments that I have moved. In as much as I do not desire that a maximum figure should be fixed for representatives in the House of the People, it follows that such maximum or proportion being fixed as between the two Chambers would also be out of place. If my previous amendments are accepted, then this would follow as a matter of course. I, therefore, do not think it necessary to take any further time of the House. I commend the amendment for the acceptance of the House.

Mr. Vice-President : Amendment No. 1432 is verbal and is therefore disallowed.

Amendment No. 1433 both alternatives and amendment No. 1437 are of similar import. Amendment No. 1437 may be moved. It stands in the name of Prof. Shibban Lal Saksena.

(The amendments were not moved.)

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, with your permission and the permission of the House I wish to move amendment No. 1434 in a slightly altered form. There will be some verbal changes in accordance with a similar amendment which has already been accepted by the House.

I beg to move:

"That in sub-clause (c) of clause (5) of article 67, for the words 'last preceding census', the words 'last preceding census of which the relevant figures have been published' be substituted."

This is the form in which another similar amendment was found to be acceptable to the honourable Member, Dr. Ambedkar. This matter has already been discussed in the House and the principle has already been accepted in another context, namely, that if we have to depend upon a census, it must be a census of which the figures are available. We cannot depend upon a census for which figures are not yet available. If we are to hold an election, almost immediately after a census is held the figures will not be available. It takes about a year to make the figures available. We have to do a lot of things depending upon census figures before an election. In these circumstances one has to depend upon the previous census of which figures are available. This matter was well discussed in the House and the principle was accepted and this amendment is practically consequential upon the acceptance of that motion.

Shri L. Krishnaswami Bharathi : Sir, I beg to move:

"That with reference to amendment No. 1434 of the List of Amendments, in sub-clause (5) of Article 67, for the words `members to be elected at any time for', the words 'representatives allotted to' be substituted."

Clause (c) reads as follows:

"The ratio between the number of Members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India."

As per clause (b), there shall not be less than one representative for every 750,000 of the population and not more than one representative for every 500,000 of the population. That latitude being given, it is just possible that they may not be uniformity of representation throughout India. The object of this clause is to secure a uniform scale of representation throughout India, whatever it may be, and in order to secure this uniformity this clause is introduced. But the wording "members to be elected at any time for each territorial constituency" does not bring out the sense fully and hence my amendment that for the words "members to be elected at any time for", the words "representatives allotted to" be substituted. If my amendment is accepted the clause would read:

"The ratio between the number of representatives allotted to each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India."

It is in order to bring out the sense more clearly that this amendment is moved.

(Amendment Nos. 1435 and 1436 were not moved.)

Mr. Vice-President : No. 1438 is disallowed as being formal.

(Amendments Nos. 1439, 1440, 1441 and 1442 were not moved.)

Amendment No. 1443 is disallowed as being verbal.

(Amendments Nos. 1444 and 1445 were not moved.)

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That clause (7) of Article 67 be omitted."

This clause deals with territories other than States. The objection to this clause is that it gives the right to Parliament to determine the representation of areas other than the States. With regard to these territories, I submit, as I submitted in connection with another similar amendment, that if any area is governed by any authority, that authority should decide its representation. That principle should be fixed in the Constitution. It should be left to an appropriate authority in the area to whom representation is given. There would be some authority functioning in those areas and it is for that authority to fix their own representation and not for Parliament. It may be a referendum or the like. In fact, it deprives certain areas of the right of self-determination.

Mr. Vice-President : Amendment No. 1447 Prof. K. T. Shah.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move:

"That in clause (7) of article 67, for the word 'may' the word 'shall', for the word 'territories' the words 'the territories' and for the words 'other than States' the words 'directly governed by the Centre on the same basis as in the case of States which are constituent parts of the Union' be substituted respectively."

The amendment clause would read:—

"Parliament shall, by law, provide for the representation, in the House of the People, of the territories directly governed by the Centre on the same basis as in the case of States which are constituent parts of the Union."

That would put all those territories on a paper as between themselves.

I have already mentioned, Sir, that there are considerable chunks governed directly by the Centre; and perhaps there may be more hereafter, if new territories desire to form part of the Union. And if even for a while these are to be directly governed by the Centre, it is but right and fair that they should be also receiving some representation.

I would, therefore, make it compulsory by the Constitution that they too be provided with adequate representation. Their representation should be on the same basis as that for other States already forming part of the Union, i.e., one representative for every 500,000 population. There should be no talk about any territory being more developed, and therefore better fitted to be represented, while others are called less developed and backward and therefore not fitted to be properly represented either in their own land or in the Union as part of the Union. This kind of talk might suit the alien power which ruled in the land up till 18 months ago; and for that power the entire country was deemed for a long time to be unfit for representative institutions. Had those ideas prevailed, we should not be shaping this Constitution for a free-India today. It is of the essence of such institutions and of the task of working them, that people learn to use them by using them. No amount of teaching their use will make people learn to use them as the actual responsibility of using them. Accordingly, I feel that this flows directly from the previous amendments which I have moved and should, as such, be accepted.

Sir, I commend it to the House.

Mr. Vice-President : Then we come to amendments Nos. 1448 and 1449 which are disallowed as they are merely verbal.

Amendment No. 1450 standing in the name of Pandit Lakshmi Kanta Maitra may be moved.

Pandit Lakshmi Kanta Maitra : Mr. Vice-President, Sir, I beg to move:

"That in clause (8) of article 67, after the word 'readjusted' the words 'on the basis of population' be added."

Clause (8) of article 67 provides that upon the completion of each census the representation of the several States in the Council of States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority in such a manner, with effect from such date, as Parliament by law may determine. My amendment is that this readjustment should be made on the basis of population. The amendment is self-explanatory and I need not labour the point. I commend the amendment for the acceptance of the House.

Mr. Vice-President : There is an amendment to this amendment, No. 43 of List II, standing in the name of Mr. L. K. Bharathi.

Shri L. Krishnaswami Bharathi : I am moving it, Sir, I beg to move:

"That with reference to amendment No. 1450 of the List of Amendments, after clause (8) of article 67, the following new proviso be inserted:—

'Provided that such readjustment shall not affect representation to the House of the People until the dissolution of the then existing House'."

Sir, sub-clause (8) of article 67 reads as follows:

"Upon the completion of each census the representation of the several States in the Council of the States and of the several territorial constituencies in the House of the People shall, subject to the provisions of article 289 of this Constitution, be readjusted by such authority, in such manner and with effect from such date as Parliament may, by law, determine."

[Shri L. Krishnaswami Bharathi]

The object of this sub-clause is, that after the elections to the Legislature—either the Council of States or the House of the People, as the case may be—census may happen to be taken and new figures may be available; and we have of course to adjust the number of seats in accordance with the census figures available then. But it may not be quite possible to provide representation in accordance with the figures available thereafter, but it has got to be done only at the subsequent elections. So, in order to obviate this difficulty, whenever there is some census taken and figure available, in terms of which we have got to adjust, it has to be adjusted only later on at the subsequent election and should not have anything to do with the existing Council of States or the House of the People. A similar provision is found in article 149, sub-clause (4). It is an omission here and I have sought to bring it here so that it may be in line with the scheme as found in article 149. I hope this amendment will be accepted by the House.

Mr. Vice-President : Amendment No. 1451 standing in the name of Shri Nandlal comes next. The honourable Member is not in the House.

Amendment No. 1452 standing in the name of Mr. Mahboob Ali Baig may be moved.

Mr. Mahboob Ali Baig Sahib (Madras : Muslim) : Mr. Vice-President, Sir, I beg to move :

"That article 67, the following new clause (10) be added:—

'(10) The election to the House of the People shall be in accordance with the system of proportional representation by means of a single transferable vote'."

Sir, I am only proposing the extension of the principle which we accepted yesterday in the matter of election to the Council of States. I am very much gratified to find, Sir, that yesterday the House recognised the principle underlying this method of election and I need not repeat all the arguments that I adduced yesterday in support of this system and to establish the fact that this system of election is more democratic and more scientific. But by the speeches of some honourable Members of this House, especially my honourable Friend. Pandit Kunzru, an impression was created on this House that in that particular case, namely, in the case of the Council of States, the electorate therefore are the Members of the legislature, who were elected on a joint electorate and not on communal electorate. Therefore, there was no danger, if this system is adopted for the election of Council of States and of any council, of any communal party coming in. That was the reason, he said, he was supporting it. Thereby he meant, if I may be permitted to say inferentially, that if the method of election would enable communal parties to be returned to the legislature, he would not support it. My submission is that there is no scope for any communal body as such being returned by this method, and if it could be returned, it would be returned in the same way as anybody holding different views from the majority party could be returned. If there is no objection to a section of people holding views different from the majority they could get into the legislatures by this method. I do not see any reason why any communal body should have the right to be returned. The reason why Pandit Kunzru supported this method for the Council of States, he said, was that people holding different views must be enabled to be returned, although they may be holding the view which was not held by the majority. That was the reason why he said that proportional representation method is good, because it enabled people, who held different views from the majority, to enter the legislature.

Therefore, Sir, my submission is that if there is any defect in this system of election, according to me, it is this Parliamentary democratic system, it is the political party system that is responsible and not the method as such. On a former occasion, I said that because of this party system, this Parliamentary democracy where one party is returned and it tries to dominate another and

make it impossible for the minority party to be returned and all repression and suppression takes place, it is for that reason, Sir, I said this form of Government based upon Parliamentary democracy is not desirable. Whatever it is, Sir, my submission is this method of election, this method of proportional representation by single transferable vote will enable peoples and parties in the country, who hold views different from the majority party, to be represented in the legislatures. What is true in the case of election to the Council of States is equally true in the case of election to the House of the People. Why should it be different, I ask, if this method would enable a party or section of persons, who hold different views from those views held by the majority, if this method enables those persons to be represented there and thereby they form what is called 'an Opposition Block'? Can you think of any parliamentary democracy where there is no opposition? Unless there is opposition, Sir, the danger of its turning itself into a Fascist body is there. An opposition can come into existence only if persons holding different views from the majority are enabled to be returned to the legislature. So, Sir, by this method and by this method alone, I submit there can be a strong opposition in a parliamentary democracy. So, my submission is, in the first place, on principle, there is nothing wrong in it and as I said, it is more scientific and democratic, and I submit, that it will enable sections having different views from the majority party to be returned and thus form an opposition to the party in power. Otherwise, it will degenerate the party in power into a fascist body. Therefore, Sir, I commend this method even in the case of election to the House of the People.

Sir, I do not move the other alternative amendment.

Mr. Vice-President : The article—clauses (5) up to the end—is now open for general discussion.

Pandit Thakur Dass Bhargava (East Punjab : General): Mr. Vice-President, Sir, clause (5) of article 67 speaks of the fixation of 500 representatives to the House of the People and also says that these representatives shall be directly chosen by the electors and clause (b) speaks of territorial constituencies. I sent in amendments, in regard to these two sub-sections and the purport of the amendments was that a reference to article 292 be deleted, as also that the territorial constituencies should be of contiguous areas and there should be no special constituencies or reserved constituencies. As a matter of fact, this clause (5) only speaks of one method of the choice of the voters and does not say in what particular way these electors will have the right to choose the representatives. An amendment was sought to be moved by Mr. Karimuddin to the effect that the representation should be by way of proportional representation by the use of cumulative voting, which to my mind clearly means a reversion to separate electorates. I propose that these two clauses and the question of the reservation of seats under article 292 and other articles which relate to elections may be fully discussed at the time when we are on those articles and not separately here. Because, if we choose to make modifications in article 292 or 293 as they stand, the right of proper occasion to amend or adopt them will be when we will be considering these articles. Therefore, my humble submission is that in regard to clause (5) we may take it that unless articles 292 and 293 are disposed of, we shall not be debarred from moving amendments there and modifying them as we choose. I therefore propose that discussion about reservation of seats, delimitation of constituencies and the method of delimiting them be postponed to the time when we consider articles 292 and 293.

In regard to the rest, I also wanted to propose an amendment to clause (6) that illiteracy should also be regarded as one of the grounds for not giving a vote on the basis of adult suffrage. If a person is illiterate, he should not be granted the right to vote. As a matter of fact, my idea in moving this amendment was not to deprive any persons of their right of voting, because I am very much in favour of adult suffrage. I wanted that as the elections are not coming on before another two years or one year, by that time, every elector should educate

[Pandit Thakur Dass Bhargava]

himself and could at least know how to read and write, as in my opinion reading and writing can be acquired by any person in three months. It will give a great fillip to the drive for adult education and to the electors to make an attempt to know how to read and write, if we condition the exercise of the right of voting to literacy. When I consider, Sir, the number of electors which will come on the electoral roll if we allow the basis to be adult suffrage, I am astounded by the magnitude of the problem. According to calculations, I understand that there will be something like twelve crores of voters. In a population of thirty crores, it is not a wrong estimate to think that the number of voters may be twelve crores. If there are 500 representatives, it means that each constituency will consist of at least 240,000 voters, if there are single members constituencies. If there are multi-member constituencies, then if a constituency is formed for the purpose of electing four members, there will be something like 960,000 voters. At the present time inordinary elections for the Central Legislative Assembly, we had from 8,000 to 40,000 voters. With this increase of numbers, I shudder to think how we will be able to arrange for the elections. It will require not one or two days as at present for the elections; it will require, I think, about a month. The number of booths will be very large. I think the magnitude of the problem is such that it must give serious cause for doubt whether we would be able to hold these elections in the manner in which we want them to be held. How will this large electorate be educated? How will you approach these electors so that the elections might be good. When I consider that there is a proposal to have multiple constituencies, and reserved constituencies, the situation becomes all the worse. So far as I think, at present, a person belonging to the Depressed classes, etc., is known only in his Taluka; he is not known over several districts. If the Constituency is spread over several districts, I do not know how the elections would be real. The electors will never have occasion to know who the person elected is. Therefore, to obviate this difficulty, I would suggest, for the first ten years, just limit this right of voting to literate people. We will be doing a thing which will be really useful. Otherwise, in my humble opinion, these elections will be a great farce. Therefore, my submission is that if the House is so advised, we should have the provision of literacy put in clause (6).

Similarly, I have to make one point more; that is about sub-clause (c) of clause (5). The words in the article are "as ascertained at the last preceding census". The population as ascertained at the last preceding census will, in many cases, be absolutely wrong. In East Punjab lakhs of people have come from West Punjab and gone away from East Punjab. Similarly in West Bengal, people are still coming in from East Bengal. In regard to Delhi, there has also been a large influx of population. The last preceding census will not give the correct figures and if we consider the present position, the figures will be quite incomparable with the real figures in which the population is to be found in these places. Therefore we shall have to have recourse to some other expedient, and the expedient which has been suggested is in article 313. I doubt very much if we would be able to arrive at the real figures from the number of electors. The right figures about the population from the number of electors will be at best a conjecture and it will not be in accordance with the true principles set out in clauses (5) to (8). Therefore, my humble submission is that with regard to East Punjab and West Bengal, unless a census is taken, we will not be correct in our figures. This will entail a good length of time. If the elections are coming in 1952 or 1951, then the position can be solved; otherwise, you will have to take a census before these provisions can be given effect to, or the words "as ascertained at the last preceding census will have no meaning for us. If these words are taken in their literal sense and no adaptation

is made, it would mean for such of the Muslims, about 50 lakhs as have left East Punjab, you will reserve about fifty seats in the local legislature whereas the population of the Muslims at present is said to be about two lakhs. These are real difficulties which have to be solved. Unless we solve these difficulties, my own apprehension is that there will be no real elections.

In regard to article 292, I have to submit one more word. In clause (5), the reference to article 292 is certainly not wanted, because article 292 deals with direct elections, in regard to constituencies and in regard to reserved constituencies also. The present position is that they are proposed to be chosen by direct elections. The reference to article 292 is absolutely unnecessary. Even if it is kept, I would, with your permission, repeat this that I take it that the reference to article 292 does not bind the House and we would be able to modify article 292. I do not want to conceal my feelings from this House that I want that there should be no reservation of constituencies for any communities, i.e., no reservation of seats for any community. I only want that so far as the Scheduled castes are concerned, there may be reservation of representation, which we can do on the lines suggested in article 293. We do not want any reservation of seats because if you consider the whole question, and if you consider the multiple constituencies, the entire elections will be absolutely unreal. Our difficulty is that we have not realised how these constituencies will be formed. When the matter comes to the House in a concrete form, I am perfectly sure that the House will not even touch the reservation of seats with a pair of tongs.

With these remarks, Sir, I support article 67.

Shri Deshbandhu Gupta (Delhi): *[Mr. Vice-President, I want to draw the attention of the House specially to parts (b) and (c) clause (5) of article No. 67. My learned Friend, Pandit Thakur Dass Bhargava, has also drawn the attention of the House and has pointed out that if we are relying on the last census figures for fixing the number of representatives then it would affect adversely, specially in the case of East Punjab, West Bengal and Delhi. I want to point out that so far as East Punjab is concerned only a little less of the population which has gone away from East Punjab to the Pakistan, has come from Pakistan to East Punjab, and therefore the population of East Punjab has not swollen much. But as regards Delhi, it is an admitted fact, that its population has greatly swollen by the influx of refugees more than in any other town. According to the last census, Delhi's population was about 9 lakhs, but at present it is estimated to be about 19 lakhs. Therefore it would be very unfair for the Delhi province should the number of representatives be fixed according to the last census.

Mr. Vice-President, that is why I want Dr. Ambedkar and others to keep this fact in view. I hope that in regard to Delhi and other cities, whose population has swollen apart from the natural causes, due to the partition of the country, this fact would be borne in mind when seats are allotted to them. I think that in clause (c) if for the words 'actual population' the words 'actual number of voters' are inserted, then there would be ground for any objection from anybody. Therefore, I want this fact to be borne in mind, and as has been provided by article 313 of the adaptation clause or under it, or in any other form, an assurance to this effect should be given; otherwise grave injustice would be done to Delhi and other towns, which have absorbed our refugee, uprooted brethren from Western Pakistan, who would be denied their due representation in the House.]

Shri Prabhudayal Himatsingka (West Bengal : General): Mr. Vice-President, Sir, in connection with clause (5) of article 67, Pandit Thakur Dass Bhargava has tried to explain the difficulties that are likely to be encountered

* [ ] Translation of Hindustani Speech.

[Shri Prabhudayal Himatsingka]

in having a proper election. The proposal is to have one member for five to seven and a half lakhs of persons and roughly speaking we may expect that there will be about three lakhs voters in each constituency. However if the election is expected to be properly held and in order to avoid the malpractices that are seen in elections on a large scale where a large number of voters are concerned, some device will have to be found whereby the voters may be identified and false voting may be eliminated. Sir, we know from the elections that we have had to run in the past that where a large number of voters are concerned, a very large amount of malpractice is possible on account of the voters not being known to the persons or authority who are there as Polling Officers. So some method of identification should also be devised in connection with such elections.

As regards the different amendments which have been suggested about multiple constituencies and cumulative votes, Pandit Thakur Dass Bhargava has also explained that it will be a very wrong thing to do it because, as it is, the constituency will be very big and if you have multiple seats, the troubles of a candidate can be better imagined than described. If you have multiple constituencies, even the best man cannot expect to be returned without a contest. If there are more than one seat in a constituency, there will be more candidates and everyone of them, whether he is the best man to be selected or not, will have to come by actual contest and there will be, if it is a four seat constituency, about twelve to thirteen lakhs of voters and it is more, it will be similarly more and the trouble that a candidate will have to go through will be enormous.

Therefore, Sir, the various amendments that have been moved in order to have multiple constituencies or plural voting should be opposed and defeated.

With these words, I support the motion as it stands.

Mr. Vice-President : Sardar Bhopinder Singh Man. The time at our disposal is extremely limited. As there are quite a large number of honourable Members who want to speak, I am offering special facilities to those coming from East Punjab because they have very strong feelings on this matter, and I hope the House will see the reason for this special concession given to them. Now, you will kindly confine your remarks to as short a time as possible.

Sardar Bhopinder Singh Man.

Sardar Bhopinder Singh Man (East Punjab : Sikh): *[Mr. Vice-President, while discussing this article, two points have emerged clearly on which we, as a minority, feel strongly. In your last meeting you had decided without any reservation that so far as minorities were concerned, they had been given reservation of seats on principle. While accepting this principle you had given them an option that if they decide to give it up, they could do so gladly. But I feel that while reopening this question, that offer has been withheld; nay the right is being snatched away from them. Where is the occasion, I fail to understand, for being in such a hurry, to make a change so early, and for snatching away a right which had been conferaded on us in the last meeting? I can understand this much that after the expiry of ten years, when the minorities feel that the majority has gained their full confidence, then they should give up this right of their own accord.]

Mr. Vice-President : I am afraid that you are speaking on the right of separate representation: that has nothing to do with the clause in hand. I appeal to you to confine your remarks to the subject of the clause under discussion.

That is my final ruling.

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* [ ] Translation of Hindustani Speech.

Sardar Bhopinder Singh Man : *[Mr. Vice-President, I would like that at the time of forming these constituencies, particular care should be taken to make them plural constituencies. The right which you have conferred on the minorities can be preserved only if you make the constituencies in such a way that they should be able to represent themselves. It is necessary, because the minorities have not gained full confidence of the majority up till now. There is yet another point. Pandit Bhargava is trying to have the constituencies so shaped that the rural should be amalgamated with the urban constituencies. But the standard of literacy in the rural areas is so low that while competing with the urban areas, they can never succeed. Besides the old dispute between the producers and the consumers still exists. Whatever we produce, we sell them in 'Mandies' and when 25,000 votes shall be pitted against us, to my mind, the people of the rural areas shall never be able to send their representatives while contesting with the people of urban areas and the stockists. What will be the result under such circumstances? The result will be that the producers whose standard of literacy is low and who live in far-off small hamlets, would not be able to send their representatives through elections. Another result will be that the 'Mandies' would become centre of activities for ever and the villages would be cut off from the political current of the country. The twenty or twenty five thousand voters of mandies will always try to suppress the villagers politically. We in the Punjab feel that so long as there is fundamental difference between the producers and the consumers, they should have separate constituencies. Therefore, what we want is that the delimiting Committee should not be influenced by Pandit Bhargava's speech and this difference should be kept intact, namely, the rural constituencies should be kept separate from the urban constituencies.

There is yet another point. In East Punjab a large population is fluid. Some have migrated to Delhi and a part of it is going back out of Delhi. Then again it is not known what population has stayed in the Punjab and how much has migrated. In these circumstances, it is unavoidable that a census should be taken in East Punjab. To my mind, without an accurate census, confusion might prevail. Therefore, I am of the opinion that arrangements should be made for taking of a census immediately, and the rural and the urban constituencies should be formed separately and they should be plural.]

Sardar Hukam Singh (East Punjab : Sikh): Mr. Vice-President, Sir, we have provided that reservation be made for minorities under the present Constitution, reservation of seats, I mean. Certainly there are two methods only by which we can safeguard the interests of minorities. Up to now, the minorities have enjoyed separate electorates and some weightage as well. That has gone, because we have decided that on principle and basically that is a wrong method and no minority should have any weightage or any separate electorate. There are, as I said, only two methods, one recommended by the Minorities Committee, that there should be reservation of seats and that is also provided in the Draft Constitution under Articles 292 to 299. I agree with Pandit Thakur Dass Bhargava when he said that it would be better if both these clauses were taken together, and the discussion of this part of article 67 taken up at the time when article 292 was also being discussed. The amendments that are now before the House, by Mr. Karimuddin and another honourable Member, certainly are the opposite or the alternative of the reservation of seats, provided in those sections. Sir I am of opinion that if separate electorates have perpetuated communalism, which is so detestable and reprehensible, this reservation of seats, does no less (*hear, hear*). I think it is rather more harmful for the minorities, and it does not safeguard their interests. But it is, on the other hand, beneficial to the majority. When you are reserving, say 30 per cent, for the minorities, indirectly you are reserving 70 per cent for the majority. This allowance or concession or option to contest unreserved seats as well, is in my opinion, very illusory when it is

* [ ] Translation of Hindustani Speech.

[Sardar Hukam Singh]

brought into actual practice. Further, this reservation, though it is not just now before the House, because the two methods are to be discussed side by side, I am taking it,—and I crave the indulgence of the House in listening to me patiently,—this reservation of seats is rather harmful and would create the same atmosphere that we abhor so much. When the minorities see that certain Members of their own community, offensive to them, are being pushed up and backed by the majority community, certainly the relations would get strained and our object would not be fulfilled at all. And secondly, under this reservation of seats, the majority would be able to secure some Members from the minorities of their own choice, while there will be a certain proportion that would be returned by the minorities themselves. So there will be two sections and a further rift would be created between the sections of the minority community itself.

Shri L. Krishnaswami Bharathi : Sir, on a point of order, we are not discussing here the question of reservation of seats, and so I would like to know if these remarks are relevant.

Mr. Vice-President : They are relevant in the sense that the honourable Member is defending proportional representation. Am I right?

Sardar Hukam Singh : Yes.

Shri L. Krishnaswami Bharathi : But this is a matter of great importance on which we will have to concentrate and so more time will have to be allotted if we are discussing it. I wanted to bring that aspect of the matter, because it is a very big issue and.....

Mr. Vice-President : In accordance with my general policy, I shall allow Sardar Hukam Singh to speak and to refer to the question of reservation of seats, by way of illustrating the advantages of the system under discussion.

Shri L. Krishnaswami Bharathi : Sir, I should not be understood as wishing to shut out such discussion at all, but what I wanted to.....

Mr. Vice-President : Will the honourable Member please take his seat?

We must be generous and we as a majority community must be generous to the minorities *(hear, hear)*. It has proved its generosity so far; let not that tradition be broken.

Now please continue Sardar Hukam Singh.

Sardar Hukam Singh : I am thankful to the House and to the Vice-President, though I do not crave for any generosity at this moment. I will not discuss that point further.

Sir, it has been argued here by more than one Member that plural member constituencies and cumulative voting would be too costly and unworkable. My position is that if separate electorates are detestable and if reservation of seats is objectionable, then some method has to be devised by which the rights of minorities can be safeguarded and that this is the only method suggested in the amendments that can be considered. If it is cumbersome and if it is costly, then it has to be settled in accordance with the democratic principles that we are following now. And my submission is that this is the only mode by which we can satisfy the minorities and stick to our principles that we have chalked out so far.

Shri V. I. Muniswamy Pillai (Madras : General): Mr. Vice-President, Sir,…

Mr. Vice-President : May I request the honourable Members to take as little time as possible? There are many honourable Members who desire to speak and I would like to accommodate as many of them as possible.

Shri V. L. Muniswamy Pillai : Sir, in supporting article 67. I may say that I specially welcome sub-clause (6) which envisages adult suffrage. Speaking

for the Scheduled Castes I may say that this kind of election is highly needed at a time like this when we have just secured freedom for this country. Under the Poona Pact, the Scheduled Castes had to submit to two elections—the panel election and the general elections. I know as a matter of fact that this has caused great inconvenience to the candidates.

Sir, one of the Members of the Assembly has moved for the adoption of the cumulative system of voting. I feel that this cumulative system of voting under the present set-up is most dangerous, because the communities will have to go away from the main body of electors. So I feel that on no account should this cumulative system be encouraged. The distributive system of voting is bound to bring the various communities together and prove worthy of the labours undergone by them in maintaining the freedom that we have won.

One of the Members, speaking on this article, observed that reservation of seats for the minorities must go and, at the same time, generously stated that, so far as the Scheduled Castes are concerned, they should not be disturbed. Sir, I welcome the statement made by Pandit Bhargava. This matter of the reservation of seats and protection for the minorities has been dealt with in this sovereign body and we have come to certain decisions. If there is a feeling that this matter should be re-opened, the proper place to do that will be when we discuss articles 292 and 293. Whatever it may be, I feel and also every Member of the Scheduled Castes in this sovereign body feels that the protection given to this community should not be disturbed. You yourself know, Sir, in your tours throughout the country, the disabilities of the Harijan community. The minorities Report has considered those things and this sovereign body after considering that report has agreed to give some protection to the minority communities. That being so, without taking more time of the House I will conclude by saying that the safeguards and the protection afforded to the Scheduled Castes and tribes should not be disturbed. When we deal with articles 292 and 293, as I said, we can have elaborate discussion on the various points that may be raised then as regards protection for minorities.

Mr. Vice-President : Mr. Khandekar may now address the House. I expect him to confine his remarks to the matter under discussion and to take as little time as possible. There are limits to the patience of the majority community on this question.

Shri S. Nagappa (Madras : General): My friends say that there is no limit to their patience.

Mr. Vice-President : That was a remark meant for Mr. Khandekar only.

Shri H. J. Khandekar (C. P. & Berar : General): *[Mr. Vice-President, I rise to express my views on the matter that is at present engaging the attention of the House. When we go through clause (5) of article 67, we find that the provisions of this clause are subject to the provisions of articles 292 and 293. Article 292 provides for reservation of seats for minority communities and since I myself belong to a scheduled caste—a minority community, I am glad that this House has accepted the article. The Minorities Sub-Committee and the Advisory Committee had also recommended to the House for reservation of seats for minorities. I need not say much about the condition of the minority communities to which I belong. The scheduled castes constitute that section of the country which has been kept suppressed by the other sections for the last thousands of years and which has been denied social and political rights.

I may recall to you, Sir, that under the Government of India Act, 1919, provision had been made for the nomination of persons belonging to the scheduled castes for some seats reserved for this purpose in the Provincial Legislatures. Our representatives present at the Round Table Conference had

* [ ] Translation of Hindustani Speech.

[Shri H. J. Khandekar]

made a demand that seats be reserved for scheduled castes according to the numerical strength. But to the misfortune of our community, Mr. Macdonald gave an award according to which the scheduled castes which have a population of 75 millions in the country, got only seventy two seats out of a total of 1580 seats, that is, the Macdonald Award allotted us seats many times less than what we should have been given, according to our population. I am very glad that when the Award was announced, Respected Bapu undertook a fast in Yervada Jail as a result of which the Poona Pact gave the scheduled castes 151 seats out of a total of 1580 in the Provincial Legislatures, *i.e.,* just double of what they had been given under the Macdonald Award. I therefore express gratitude to Respected Bapu on behalf of my community. But in this connection I can say that allotment of 151 seats was also not in proportion to our numerical strength and as my Friend Mr. Muniswamy Pillai has observed, we had to contest two elections under the Poona Pact. First, for Panel election there was contest amongst ourselves and after that in the general election we contested the candidates of other communities. At that time there was cumulative system of voting for us and not the distributive system. My Friend Mr. Kazi Syed Karimuddin has moved an amendment, No. 1415 on the list, seeking to introduce cumulative system of voting. If it is accepted, elections will be held on the basis of cumulative system of voting. Under this system if there be two seats, one reserved and the other general, in a constituency every voter would be given two ballot papers and he would have the option to cast both of his votes for one candidate or distribute these among two candidates. In this case naturally a voter, to whichever community he may belong, will cast both of his votes for the candidate belonging to his community and not to person of other communities. Communal rivalry therefore will continue. We have to do away with communalism as early as possible and therefore I oppose that amendment. As I belong to Harijan community whose elections were so far held on the basis of the cumulative system of voting, I have more experience of it than others. I have still in my mind the disastrous results of the cumulative system.

The minorities Sub-Committee and the Advisory Sub-Committee which were formed by this Assembly and above all Dr. Ambedkar himself who has been the greatest supporter of separate electorate have disapproved of separate electorate and have, by voting for joint electorate, eliminated the canker of communalism from our polity. I thank them all for this. In the circumstances I have no option but to interpret this move of Kazi Syed Karimuddin as motivated by the desire to secure separate electorates by indirect means, for while on the one hand we would be abolishing separate electorate, on the other we would be retaining it by having the cumulative system of voting. If we accept the amendment, it is plain that its consequences would be that members of a community would under the cumulative system of voting, cast their votes for the candidate belonging to their community, and thus separate electorates will continue to exist indirectly. I therefore oppose the amendment moved by Mr. Kazi Syed Karimuddin.

There is another point to which I would like to draw the attention of Dr. Ambedkar, and I hope he would give his consideration to it. Sub-Clause 5(c) of the article refers to a census. A few days ago a clause in which the expression "latest census" occurs, was discussed and passed by this House. It would be better if we add the word 'latest' before the word 'census' in this clause also in order to bring it into uniformity with that clause. I may state the reason why I make this suggestion. In the next election to be held under article 292, minorities will have some reserved seats in the Provincial Assemblies. They will have one seat for every one hundred thousand of population and in the Central Assembly one seat for every million of population. I am sorry to have to say, Sir, that we do not trust the census figures recorded

in 1941 because the population of Harijans shown in that census is very incorrect. Therefore, Sir, unless a fresh census is taken and the population of Harijans ascertained, I do not believe we would be allotted our due numbers of seats. I may submit, Sir, that according to our population there should have been sixty members from amongst our community in this House, because before partition our population was sixty millions. In this connection I am sorry to say, Sir, that in spite of the announcement of the British Government and the decision of the Congress, that Harijans would also have representation according to their population, only twenty seven representatives of Harijans are here in this House. And I may add that it is something painful to me.

We would like to return our representatives according to our population. Even if it be found that it comes to only twenty millions we would not mind sending only twenty members. But a census must be taken before elections are held. I am sure our population can under no circumstances be only twenty millions. Even today when the country has been partitioned, our population is at least sixty millions. I make this assertion without referring to the exact figures of our population. But I am sure that if reservation of representation for the scheduled castes-on the basis of one representative for every one hundred thousand of their population—is maintained in the next elections and for this purpose figures of their population are collected it would be found that their population even now is not less than seven crores. It is a well known fact, Sir, that the birth rate is high among the poor. We have no money, no learning, but we possess great capacity for producing children. I emphatically say that we are not less than seventy millions today in India. In view of these facts fresh census should certainly be taken.

With these words, Sir, I would appeal to Honourable Dr. Ambedkar that while replying to the debate he would kindly make the position clear regarding the words "preceding census" that occur in this clause. I submit, Sir, that unless a fresh census is taken, neither the provision for reservation of seats, nor electorates would be helpful to any minority. It may be that if a fresh census is taken elections are delayed. But I do not think that it must need be so. Even if the elections are to be delayed we should not be affected by that prospect. People of every section of the country say that there should be amelioration in the conditions of the Harijans. But this should not remain with these people merely a matter of lip sympathy. It should rather be their sincere desire and ought to be translated into practice. Even if elections are delayed by a year or soon account of the suggestion made above, we should not mind such delay.

With these words, Sir, I support the article and oppose the amendment moved by Mr. Kazi Syed Karimuddin.]

Shri Biswanath Das (Orissa : General): Sir, I have come to support the article and in doing so, I feel it necessary to place certain facts before the Assembly. Sir, I think that articles 67 and 149 should have been discussed together because they are correlated and one is complementary or supplementary to the other. As such, I feel that it could have been a great convenience to the honourable Members of this House if both these articles had been discussed together. I have to place before the honourable Members of this House the immensity of the resolution that they are passing today. We are giving our seal of approval to the most important principle, namely the principle of adult suffrage, by which every adult—male or female—in this country irrespective of the fact that he is a plains—man or belonging to the hill tribes or to the scheduled caste, becomes a voter and as such shares the responsibilities and anxieties of the administration of the State and becomes an equal citizen absolutely and in all respects. Having adopted this important principle it is necessary that we realise the immensity of the proposal. This makes me feel

[Shri Biswanath Das]

that we will hereafter have an electorate which in no case will be less than twenty crores. It may be more. My honourable Friend Pandit Thakur Dass Bhargava I think did less than justice when he stated that the number of voters may be somewhere between 15 and 16 crores. Our population is 32 crores and if those below 21 are eliminated I feel sure that the number of voters is bound to exceed 20 crores. 15 percent is taken as children of the school-going age, who are below 14. If that is so, I have no hesitation in saying that 25 per cent may as well be taken as people below the age of 21. As such three-fourths of the entire existing population may be taken as voters. Therefore, the country and the Government will have to keep themselves ready to meet the immensity of the proposal that they are accepting today. There would thus be a minimum of twenty crores of voters, which would mean that there should be about 2 lakhs polling stations and four lakhs of polling officers. I do not know how long it will take to conduct and finish the elections. I therefore appeal to the Government and also to you as the person primarily in charge of this work, so far as we are here concerned, to take immediate action in time to set up the machinery to carry out this stupendous task. It is through you that we are devising a special agency for this purpose, namely the election commission but that does not minimise the tremendousness of the task.

Having stated so far about the immensity of the problem, I would come to two areas which give enough cause for anxiety. These are the States and provinces in the north and also the provinces of West Bengal and Assam. In these two different and distinct areas there has been huge migration of the population. Lakhs and millions of people have migrated either to Pakistan or have come away from there. We have reservation of seats; and not only that, incertain cases, as in the case of the aboriginal population, the constitution has prescribed that whether they live on the hills or on the plains they have to be taken together and seats to be reserved on that basis. That being the position I think it would be doing a grave injustice to the People of East Punjab as also to the states bordering Pakistan in the North and also probably to the Union of Sourashtra and Bombay, as also to the two provinces of Assam and West Bengal, if a census is not taken. I think a census is called for, because of article 149. This article lays down that the basis of representation has to be devised on the figures of the previous census. The previous census is the one that was taken in 1941. It is a fact within common knowledge that due to the war and in the name of paper shortage and the like the then government did not think it necessary to take a full-fledged census. Not only that but what little information was gathered was also left aside with the result that an abridged census was taken. Ever since, much water has flown under the bridges. Therefore it is necessary that to be fair to these areas in the North-East and the North-West early census is necessary. A special census in these areas for this purpose should be undertaken. In this connection need I invite your attention to what has been done in Pakistan? In Pakistan they have undertaken a census in the Provinces of Sind and the West Punjab as also in East Bengal and they have come to certain conclusions for the purpose of representation in the Constituent Assembly after this census. What was done in Pakistan could have easily been done in India and need I say that even today it is not too late for a census to be taken in all seriousness without further delay.

Having said so much about census I come to another aspect of this question. Soon after passing the Third Reforms Act in the British Parliament the late lamented Gladstone declared in the House of Commons that the time has come when they should find more money and put forth all their exertions to educate their "little masters". Who are these little masters? These little masters are the voters : they are the real masters. What have you done to

educate your little masters? In this country the percentage of literacy is about ten per cent. Female literacy is much lower; so also is the case with the scheduled castes. As regards literacy among the hill tribes whom you have enfranchised in full and given the right to vote, it is practically next to nothing. What a tremendous risk you have taken? You are calling upon them to vote, but who are they? A very highly inflammable class of people who have up to date absolutely no experience either of propaganda or of voting in elections. Therefore I warn you to take early steps in this regard, so that the difficulties that I have placed before you are minimised. And what have you done in this regard to minimise them? You have done nothing. Last year it was my misfortune to have an interpellation in the Constituent Assembly (Legislative) to known whether Government have undertaken to appoint an organisation to delimit the constituencies. The reply was that it had already been done. What is the sort of delimitation that you have already undertaken? The Provincial Governments are asked to delimit the constituencies; they have asked their officials and some blessed official sits and delimits the constituencies. Is that the sort of delimitation that you are going to have under this Constitution? I warn the Government, and through you, Sir, I beg of the honourable Members of this Constituent Assembly to see that these conditions are changed. Immediate action is necessary to see that delimitation of constituencies is undertaken and necessary steps in that regard should immediately be taken.

With these words, Sir, I fully support the article, but with the warning that I have given.

Maulana Hasrat Mohani (United Provinces : Muslim): *[Sir, I had very little to say about article 67, but one thing has compelled me to speak something regarding this.]

Shri S. Nagappa: Mr. Vice-President, the Maulana can speak in English.

Mr. Vice-President : Can the honourable Member not speak in English?

Maulana Hasrat Mohani : I have to make an effort.

Mr. Vice-President : That does not matter, we care only for thoughts, not for your language.

Maulana Hasrat Mohani: *[And what is that mentioned in this article which has compelled me to express my thoughts? It is this: clause (5) (a) reads thus: "Subject to the provisions of articles 292 and 293 of this Constitution, the House of the People shall consist of not more than five hundred representatives of the people of the territories of the States directly chosen by the voters." The meaning of this clause and of article 293 is that seats have been reserved for minorities. I am, therefore, strongly opposed to reservation of seats and there should be no reservation under any circumstances. I say that there is absolutely no need of reservations, after we have made provision for joint electorates and adult franchise. The two cannot go together. When the electorates would be joint, it would mean that everybody will have the right to stand and to contest from each and every constituency. On communal basis you are making its scope limited as you have already said that you would like to give reservations to the Muslims because they are in minority. I do not know about scheduled castes, but a friend of mine has just said that you would not like to give them any reservation. Why do you call the Muslims a minority? They can be termed as a minority only when they function as a communal body. So long as Muslims were in the Muslim League, they were in a minority. But if they elect to form a political party without any restriction leaving it open to any community, then you should remember that whenever political parties would be formed, the Muslims would give fight by forming coalitions. Therefore, I say that Muslims would not like to be called a

* [ ] Translation of Hindustani Speech.

[Maulana Hasrat Mohani]

minority. To say that Muslims are in minority is to insult them. I cannot tolerate this even for a moment. I have had a talk with several Members. They have told me: We are conceding this to the Muslims out of generosity. I ask: Who is asking for this generosity? Muslims will become part of the majority party and they will become majority. We do not want any generosity or concession from you. Does any Muslim require it? Concession to whom? We refuse to accept any concession. In case majority party or the Congress party accepts reservation of seats, its claim for creating a secular State and of putting an end to communalism would be classified. I say, you have not put an end to communalism. The proof is that this hob-goblin, namely that Muslims are 14 per cent and Hindus are 86 per cent, and that the Muslims being 14 per cent, reservation should be given to them—still persists in your mind. I think that the question of reservation of seats has been raised by the Nationalist Muslims who had always been your slaves and slaves of the Congress. You want to reserve these seats for them and when these 14 or 15 per cent seats are reserved they would get them first of all. I take the responsibility, we will isolate the nationalists. Muslims will form coalitions and shall defeat the purpose of your device and I am sure that the Muslims shall not remain in minority.]

Giani Gurmukh Singh Musafir (East Punjab : Sikh): *[Mr. Vice-President, I had no mind to speak today but as an important matter is under discussion, I would very much like to express my opinion. I am therefore thankful to you, Sir, for giving me this opportunity to speak. Two points have been raised concerning article No. 67, one is regarding the census and the other about the constituencies. In clause (5) of the article there is a reference to article 292 which deals with the question of minorities and hence it would be relevant here to speak about the reservation of the minority problems. It would be to my liking if the chapter pertaining to the minorities is altogether removed; without that there can be no salvation for the country. There remains the question of reservation. Howsoever much one may ponder over the question, he is bound to come to the conclusion that reservation on population basis is of no good to the minorities; and particularly for the Sikhs, reservation is of no use. I am afraid, now the situation is taking such a turn—it may be said the Sikhs are more particular to reservation even than others. I know, at present such things pertaining to matters of policy and others alike, are going on, and which are quite natural during such interim periods. I will not go into the details. Our leaders might have before them some considerations on grounds of expediency and so I would not go into that matter. But this much I would like to make clear that if reservation is retained in the Constitution, it would not be because of the Sikhs. In other words, what I mean to say is that Sikhs would not be in the least benefited by reservation. To cramp them with reservation is to check all their progress. Of course I do think of the Harijans and Scheduled Castes in this connection. But at the same time I think that just as the poison of separate electorate is being removed from this Constitution, similarly no other canker should be allowed to remain by which the communalism may again spread. To achieve this end healthy conventions can be established. Suitable representation can be made through nominations, as would leave no room for objection from any one.

The second point is regarding the constituencies. Pandit Thakur Dass Bhargava had tabled an amendment but it was not moved, and he did not even press for it. This, however, is quite another matter. In my opinion, urban and rural constituencies should be kept separate. Time is not yet ripe to have joint electorates. People of rural areas need education first. They are very backward at present, while people of urban areas are advanced. If

* [ ] Translation of Hindustani speech.

one is on the top and the other is on the floor, they cannot meet. In other words a motor-car and a tonga cannot be run together. It is necessary to gradually raise the level of the man at the bottom, and it will also be necessary for the man on the top to mould his mentality in such a way as to treat the man below like his own brother. Only after this has been done, the purpose will be achieved. I do not mean thereby that disparity between the urban and rural areas should be perpetuated, and I do not lay much emphasis on the point that village people are backward. It is possible that in other aspects there is more awakening in the rural areas, but it is a fact that they have not much resources. They are so placed that only our government can make any arrangements for them. At present access to villages is difficult. For these reasons I think that rural constituencies should be kept separate, otherwise village people would be at a disadvantage. With these words I support this article.]

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, out of the articles which we have passed so far excepting perhaps articles Nos. 13 and 25 which guarantee fundamental freedoms, this article I think is the most important article. Here we are giving the right to vote to every adult citizen of India, and I think, people will realize later on what this really means. The election so far has been held on a narrow franchise, and now if in the new census the population of India is nearly 35 crores, we should have an electorate of about 20 crores in the country. Even America has got only about 5 or 6 crores of voters. But here 20 crores of voters will go to the polls to elect their representatives. I think this fundamental right of adult suffrage guaranteed to all people is the most important part of the Constitution. It has raised great hopes in us and today we are realising the ideal for which we have fought for the last so many years. I think that in clause (6), which guarantees this right, the word 'crime' has also been included as disqualifying a person from being a voter. I feel that even those persons who have been to jail, but have come back afterwards and reformed themselves should not be debarred from becoming voters, and I, therefore, think that the word 'crime' should not have been there. I have no objection to all other conditions, non-residence, unsoundness of mind, etc. being there.

Then, Sir, this article is an omnibus article providing for the constitution of the Council of States and the House of the people. Sir, I cannot refrain from saying that I am one of those who believe in only one Chamber and not two Chambers. Here they have provided for two Chambers and the worst part of this is that in the Upper Chamber we shall have twelve nominated Members; and we passed the other day that even those Members, who have been nominated and who will never seek the vote of the people, can become Ministers also. I think this is a most undemocratic aspect of our Constitution. Everybody who was a specialist in literature, art and science could surely have got...

Mr. Vice-President : May I ask the honourable Member to refrain from referring to business which has already been passed. The present discussion is with regard to clause (5) up to the end. That was what was agreed to by the House.

Prof. Shibban Lal Saksena : If that is the position. I will refrain from referring to the earlier clauses, although I think we are discussing the whole article.

Then, Sir, another thing in this article is the provision for delimitation of constituencies having a population between 5 lakhs and $7^1/_2$ lakhs. I think the upper limit was unnecessary. It is not provided anywhere how the exact figure between these two limits will be determined, but I think the average figure will be the figure suited for allotment of seats to every province, and will be somewhere about 6,25,000. I personally think that the clause as it stands, will create great difficulties.

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There will have to be big multiple constituencies of 13 lakhs and twenty lakhs population and I do not think poor candidates will be in a position to contest in such constituencies. If we want reservation for minorities, big multiple constituencies cannot be avoided. Only those people who are rich will then be able to get elected. Besides reservations will keep communal passions alive. I therefore think we must have no reservations. In fact, I was very glad to hear my honourable Friends Maulana Hasrat Mohani and Giani Gurmukh Singh Musafir when they said that they do not want any reservation. I think this Constitution must completely abolish all reservation. Let us have a completely secular State where every one will be a free citizen of India and every one can get elected irrespective of his community. I am sure communal passions will die out in a few years and there will be no need for any reservation. I think the time has come, and certainly by the time the elections are held, we shall require no special reservations. If we decide to have reservation for minorities, then the amendment which Dr. Ambedkar did not move should have been moved; otherwise, there will have to be very big constituencies. Even if there is to be one general seat, one Harijan seat and one other reserved Muslim seat in a particular constituency, there will be about eleven lakhs of voters which each candidate will have to canvass and no ordinary person can approach eleven lakhs of voters with his limited resources. Then, there will have to be innumerable booths; I do not know how many booths will be required. I think it will be an impossible task and so even from practical considerations, I think reservations should cease. Again, it is also possible, if there are to be very big multiple constituencies, some people may not be able to get a fair chance; their sphere of influence may be broken up or it may be resumed for a minority community.

Therefore, the only possible and practical course is that there should be no reservations. I am sure the fear of the minorities will soon be removed and I am sure that the People who are now in favour of reservation will also come forward and say that they do not want any reservation. If no reservation is made, we must see that a larger number of members of the minority communities are returned than their population entitles them to.

Sir, the proviso to sub-clause (2) of clause (5) is proposed to be omitted. This is also not fair. Under article 67 clause (1), in the Council of States, the number of representatives of the States shall not exceed forty percent. Here, in the Lower House the proportion is sought to be abolished. If the States remain to some extent what they are today, if they only accede to the extent of Defence, Communications, etc., this abolition of the proviso will not be possible. The number of representatives from the States may be larger than is warranted by their population. I think the original proposition was better. The States should have seats only in proportion to their population. If the States come into line with the provinces, and the distinction is obliterated, then of course there will be no objection to the omission of the proviso.

Sir, I had given notice of an amendment for the deletion of clause (7). My purpose was, I did not want that Parliament should have the power to make laws to provide for the representation in the House of the People of territories other than States. This is a matter for the Constitution and not for the Parliament. Parliament may always try to make laws in favour of the party which is in power. Parliament should be debarred from making laws in respect of such matters. I think clause (7) should be deleted, because it gives to Parliament the power of creating additional seats in the House of the People.

Sir, these are very important considerations. We have already discussed so many amendments and I think the verdict of the House will be soon known.

Only those amendments which are accepted by Dr. Ambedkar will be accepted by the House. Even though this article is not as I wish it to be, still I think it is a very important article and it should be passed.

Shri M. Ananthasayanam Ayyangar (Madras : General): Mr. Vice-President, Sir, I shall address myself only to some of the more important amendments of substance that have been moved relating to clauses (5) to (8) of article 67.

Sir, I am much obliged and it is very gratifying to see that members of the minority communities, particularly, my honourable Friends Mr. Karimuddin and Mr. Mahboob Ali Baig were against any reservation for their community. In its place, they have suggested two methods of election; one, proportional representation by means of the single transferable vote, and the other proportional representation by means of cumulative vote.

Mahboob Ali Baig Sahib Bahadur : May I correct my Friend? I never said anything about reservation of seats.

Shri M. Ananthasayanam Ayyangar : Very well; I stand corrected. So far as my friend Mr. Karimuddin is concerned, he did not want any reservation. In its place he wanted election by proportional representation by means of the cumulative vote. Mr. Mahboob Ali Baig evidently wants to run with the hare and hunt with the hounds. He wants both this and that; I will come to him later. The majority opinion seems to be against reservation that is provided for in articles 292 and 293. I also find that with the exception of the Scheduled Castes, so far as the provision for others is concerned, there is the other opinion also from members who do not belong to the minority community that such reservations ought not to exist. Of course, this matter will stand over and will be discussed more elaborately when we come to article 292 and 293. In the interests of the minorities themselves, I would urge that it would not be very useful to them if they insist on reservation, because .....

Mr. Vice-President : Are you speaking on article 292?

Shri M. Ananthasayanam Ayyangar: No; I am referring to the alternative that has been proposed.

Shri Jaspat Roy Kapoor : (United Provinces : General): Why not delete reference to article 292 here from this clause?

Shri M. Ananthasayanam Ayyangar : That is the subject matter of the amendment moved by my honourable Friend Mr. Karimuddin. He wanted reference to articles 292 and 293 to be omitted and in its place add something relating to the method of election: proportional representation by means of cumulative vote. Therefore, if I have said anything in regard to the absence of reservations, which is the substance of articles 292 and 293, I submit with all respect that I am absolutely relevant in what I have said. Mr. Karimuddin's amendment wants to do away with reservations referred to in article 292 and article 293 and in its place, he feels that it would be more useful if the minorities could have proportional representation with cumulative voting. Two methods of election have been suggested. With all respect to the mover, I would suggest that proportional Representation by means of the single transferable votes is not practicable at all. These are large constituencies and each constituency will consist of population ranging between five lakhs and seven and a half lakhs. Further, we are not an advanced country; many of the people are not literate. The literate population of our country is no more than fourteen per cent. Exercising preference by means of the single transferable vote is impossible. We commit mistakes even on the floor of the House in the Legislative side when we elect members of the Standing Committees in Legislature for the various Departments. We do not exercise our votes properly. Therefore it is impossible to expect the illiterate voters to be able to exercise their votes properly. For

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a long time to come it is unthinkable having regard to the low progress of literacy in our country.

Then as regards proportional representation by means of cumulative votes, my suggestion is that that has been tried regarding the scheduled caste primary election. I would refer to Volume III of the Constitutional Precedents published by Sir B. N. Rau; at page 161 he has appended an Appendix to the Chapter on the system of representation. Therein he says—

> "The number of seats a party captures in an election depends on the correctness with which it has gauged the support it commands in each of the constituencies, and set up the right number of candidates on its behalf."

As an illustration he says in the Appendix how the Congress lost both seats by miscalculation when it was possible for the Congress to have captured at least one seat. That is what happened in 1937 in the C. P. Legislative Assembly elections—Bhandars Sakoli (General Rural). Both seats were lost to the Congress. Then the Congress party contested in the Bombay Legislative Council, Bombay city and Suburban Districts, two out of four seats. If it had under-estimated or over-estimated its electoral strength and nominated less or more candidates, it would have lost a seat. Now therefore this cumulative election would not absolutely be appropriate.

Shri L. Krishnaswami Bharathi : That is not proportional representation.

Shri M. Ananthasayanam Ayyangar : That is also a kind of proportional representation. I advocate neither the system by single transferable vote nor by cumulative vote. The one is impossible and the other would not meet the purpose. In that way social justice would not be rendered. On these grounds neither the amendment of Mr. Karimuddin nor that of Mr. Baig is worth considering. I oppose both of them. Prof. Shah suggested that there ought not to be any restriction on the number of members in the House of the People. He said there must be as many as possible. My impression is 500 is large enough. Already, in a House which consists of three hundred members, almost every day we have to ring the bell to get a quorum; and so what is the good of multiplying the number? There will not be effective representation. The smaller the number of members, the more effective it will be. Of course it ought not to be too small. Five hundred seems to be quite a good number. Besides 500 is not such a fixed and an inviolable number at that: because under articles 292 and 293 provision is made for nomination in the case of Anglo-Indian community if they are not represented. Likewise, for the territories which did not form part of the States, the Parliament is entitled under the article clause (7), by law, to provide for their representation in the House of the People. The five hundred under clause (5), are representatives only from States. There can be in addition to the five hundred, some Anglo-Indian members and also members representing territories other than those from the States. Under those circumstances five hundred is not a definite number; but it ought not to be increased enormously.

Then my friend, Pandit Thakur Dass Bhargava, suggested that a kind of qualification ought to be imposed, though he did not move the amendment that literates alone ought to be allowed to vote. Sir, I want a clause insisting that there must be imposition of penalty on those people who refrain from voting. For a long time to come unless people in this country are compelled to come to the Polling Station, many people may not care to exercise their votes at all, and if you put a further qualification that they must be literate, I am sure none will take interest. You are giving adult suffrage and the vote of a single individual may not count. If most of our people are not literate till now, whose fault it is? It is too much to expect that everyone will become

literate within a period of two years. Moreover, literacy is not the only qualification. I know a number of people who are not literate but have very good common sense,—more than people with academic qualifications.

Pandit Thakur Dass Bhargava : Signing the name can be learn in two months.

Shri M. Ananthasayanam Ayyangar : With what effect? It is idle to think that merely if a man is able to sign his name, he will immediately become such a literate and educated man as to exercise his vote properly; I should say such a qualification is unnecessary. Wisely he has not moved an amendment to that effect. On the other hand it may be necessary in the future years when the election becomes so costly and people may not come to the polling station that you may have to have a provision, as exists in some other constitutions, that there must be a compulsion on voters to come and vote. As regards early elections, I would wish that even from now the various provincial Governments must take up the task of making up the list of qualified voters and also delimiting constituencies. That is the object with which we have come to some of these articles and have taken up only those articles which relate to elections. We are also proceeding from here, with the leave of the House, to consider article 148. Therefore, I believe that the Central Government will take steps to issue instructions to Provincial Governments to prepare these lists and also delimit constituencies early with a view to have the elections early next year.

I support the formal amendments moved by my Friend Dr. Ambedkar and oppose the amendments moved by Mr. Karimuddin and Mr. Baig and also by Prof. Shah.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I accept the amendment Nos. 1417, 1426, 1431 of Prof. Shah, 1434 as amended by the mover of that amendment and as amended by the amendment No. 42 of List II and No. 43 of List II. Of the other amendments, on a careful examination, I find that there is only one amendment on which I need after any reply. That is amendment No. 1415 of my Friend Mr. Karimuddin. His amendment aims at prescribing that the election to the House of the People in the various States shall be in accordance with the proportional representation by single transferable vote. Now, I do not think it is possible to accept this amendment, because, so far as I am able to judge the merits of the system of proportional Representation, in the light of the circumstances as they exist in this country, I think, that amendment cannot be accepted. My Friend Mr. Karimuddin will, I think, accept the proposition that proportional representation presupposes literacy on a large scale. In fact it presupposes that every voter shall be literate, at least to the extent of being in a position to know the numericals, and to be in a position to mark them on a ballot paper. I think, having regard to the extent of literacy in this country, such a presupposition would be utterly extravagant. I have not the least doubt on that point. Our literacy is the smallest, I believe, in the world, and it would be quite impossible to impose upon an illiterate mass of voters a system of election which involves marking of ballot papers. That in itself, would, I think, exclude the system of proportional representation.

The second thing to which I like to draw the attention of the House is that at any rate, in my judgment, proportional representation is not suited to the form of government which this Constitution lays down. The form of government which this Constitution lays down is what is known as the Parliamentary system of government, by which we understand that a government shall continue to be in office not necessarily for the full term prescribed by law, namely, five years, but so long as the Government continues to have the confidence of the majority of the House. Obviously it means that in the House

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where there is the Parliamentary system of Government, you must necessarily have a party which is in majority and which is prepared to support the Government. Now, so far as I have been able to study the results of the systems of Parliamentary or proportional representation, I think, it might be said that one of the disadvantages of proportional Representation is the fragmentation of the legislature into a number of small groups. I think the House will know that although the British Parliament appointed a Royal Commission in the year 1910, for the purpose of considering whether their system of single-member constituency, with one man one vote, was better or whether the proportional representation system was better, it is, I think, a matter to be particularly noted that Parliament was not prepared to accept the recommendations of that Royal Commission. The reason which was given for not accepting it was, in my judgment, a very sound reason, that proportional Representation would not permit a stable government to remain in office, because Parliament would be so divided into so many small groups that every time anything happened which displeased certain groups in Parliament, they would, on that occasion, withdraw their support from the Government, with the result that the Government losing the support of certain groups and units, would fall to pieces. Now, I have not the least doubt in my mind that whatever else the future government provides for, whether it relieves the people from the wants from which they are suffering now or not, our future government must do one thing, namely, it must maintain a stable government and maintain law and order. (*Hear, hear*). I am therefore, very hesitant in accepting any system of election which would damage the stability of government. I am therefore, on that account, not prepared to accept this arrangement.

There is a third consideration which I think, it is necessary to bear in mind. In this country, for a long number of years, the people have been divided into majorities and minorities. I am not going into the question whether this division of the people into majorities and minorities was natural, or whether it was an artificial thing, or something which was deliberately calculated and brought about by somebody who was not friendly to the progress of this country. Whatever that may be, the fact remains that there have been these majorities and minorities in our country; and also that, at the initial stage when this Constituent Assembly met for the discussion of the principles on which the future constitution of the country should be based, there was an agreement arrived at between the various minority communities and the majority community with regard to the system of representation. That agreement has been a matter of give and take. The minorities who, prior to that meeting of the Constituent Assembly, had been entrenched behind a system of separate electorates, were prepared, or became prepared to give up that system, and the majority which believed that there ought to be no kind of special reservation to any particular community permitted, or rather agreed that while they would not agree to separate electorates, they would agree to a system of joint electorates with reservation of seats. This agreement provides for two things. It provides for a definite quota of representation to the various minorities, and it also provides that such a quota shall be returned through joint electorates. Now, my submission is this, that while it is still open to this House to revise any part of the clauses contained in this Draft Constitution and while it is open to this House to revise any agreement that has been arrived at between the majority and the minority, this result ought not to be brought about either by surprise or by what I may call a side-wind. It had better be done directly and it seems to me that the proper procedure for effecting a change in articles 292 and 293 would be to leave the matter to the wishes of the different minorities themselves. If any particular minority

represented in this House said that it did not want any reservation, then it would be open to the House to remove the name of that particular minority from the provisions of article 292. If any particular minority preferred that although it did not get a cent per cent deal, namely, did not get a separate electorate, but that what it has got in the form of reservation of seats is better than having nothing, then I think it would be just and proper that the minority should be permitted to retain what the Constituent Assembly has already given to it.

Pandit Thakur Dass Bhargava : But there was no agreement about reservation of seats among the communities and a number of amendments were moved by several Members for separate electorates and so on, but they were all voted down. There was no agreement at all in regard to these matters.

The Honourable Dr. B. R. Ambedkar : I was only saying that it may be taken away, not by force, but by consent. That is my proposition, and therefore, I submit that this proportional representation is really taking away by the back-door what has already been granted to the minorities by this agreement, because proportional representation will not give to the minorities what they wanted, namely, a definite quota. It might give them a voice in the election of their representatives. Whether the minorities will be prepared to give up their quota system and prefer to have a mere voice in the election of their representatives, I submit in fairness ought to be left to them. For these reasons, Sir, I am not prepared to accept the amendment of Mr. Karimuddin.

Mr. Vice-President : I shall now put the amendments, one by one, to the vote of the House.

Shri H. J. Khandekar : On a point of information, Sir, may I ask Dr. Ambedkar, what about the preceding census? He has not said anything when he amended article 35 the other day. About the preceding census, is he prepared to amend it by saying 'the latest census'?

Mr. Vice-President : Mr. Khandekar may come to the rostrum and speak.

The Honourable Dr. B. R. Ambedkar : I have accepted the amendment of Mr. Naziruddin Ahmad as amended by him and as amended by Shri Bhargava.

Mr. Vice-President : I shall now put the amendments to vote.

The question is:

"That in sub-clause (a) of clause (5) of article 67, the following words be deleted:—

'Subject to the provisions of articles 292 and 293 of this Constitution'; and the following words be added at the end:—

'in accordance with the system of proportional Representation with multi-member constituencies by means of cumulative vote'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (5) of article 67, for the words 'not more than five hundred representatives of the people of the territories of the States directly chosen by the voters, the words 'such members as shall, in the aggregate, secure one representative for every five hundred thousand of the population in all the constituent parts of the Union, whether States or territories directly administered by the Centre. All members of the People's House shall be chosen directly by the votes of adult citizens. The votes shall be cast in a secret ballot and voting shall be on the basis of Proportional Representation with Single transferable Vote' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (a) of clause (5) of article 67, for the words 'representatives of the people of the territories of the States directly chosen by the voters', the words 'members directly elected by the voters in the States' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That the following be added after the words 'the States' in sub-clause (b) of clause (5) of article 67:—

'and Territories directly governed by the Centre'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (5) of article 67, the words 'divided, grouped or' be deleted."

The amendment was negatived.

The Honourable Dr. B. R. Ambedkar : Amendment No. 1426 for dropping the words of India may be put, Sir.

Mr. Vice-President : That comes later. I am putting the amendments to vote in the order in which they were moved.

The question is:

"That in sub-clause (b) of clause (5) of article, 67, after the word 'constituencies', the following be added:—

'so that each State being constituent part of the Union or Territory governed directly by the Centre is a single constituency by itself if its population is not less than a million; or grouped with such adjoining States or Territories as together have a population of not less than a million'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (5) of article 67, after the word 'constituencies' a full stop be added, the word 'and' following immediately be deleted and the word 'the' be printed with a capital 'T'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause (5) of article 67, the words 'of India' be deleted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That the proviso to sub-clause (b) of clause (5) of article 67 be deleted."

The amendment was adopted.

Mr. Vice-President: The question is:

"That with reference to amendment No. 1434 of the List of Amendment in sub-clause (c) of clause (5) of article 67, for the words 'members to be elected at any time for', the words 'representatives allotted to' be substituted."

The amendment was adopted.

Mr. Vice-President : I shall now put amendment No. 1434 as modified by the mover himself to vote. Is it necessary for me to read out the amended amendment?

Honourable Members : No, Sir.

Mr. Vice-President : The Question is:

"That in sub-clause (c) of clause (5) of article 67, for the words 'last preceding census', the words 'last preceding census of which the relevant figures have been published' be substituted."

The amendment was adopted.

Mr. Vice-President: The question is;

"That clause (7) of Article 67 be omitted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (7) of article 67, for the word 'may' the word 'shall', for the word 'territories' the word 'the territories', and for the words 'other than States' the words 'directly governed by the Centre on the same basis as in the case of States which are constituted parts of the Union' be substituted respectively."

The amendment was adopted.

Mr. Vice-President : The question is:

"That with reference to amendment No. 1450 of the List of Amendments, after clause (8) of article 67, the following new proviso be inserted:—

'Provided that such readjustment shall not affect representation to the House of the People until the dissolution of the then existing House.' "

The amendment was adopted.

Mr. Vice-President : The question is

"That in clause (8) of article 67, after the word 'readjusted' the words 'on the basis of population' be added."

The amendment was negatived

Mr. Vice-President : I shall now put the first alternative in amendments No. 1452 to the vote of the House.

The question is:

"That to article 67, the following new clause (10) be added:—

'(10) The election to the House of the people shall be in accordance with the system of proportional Representation by means of the single transferable vote.' "

The amendment was adopted.

Mr Vice-President : I shall now put article 67, as amended to the vote of the House:

The question is:

"That article 67, as amended, stand part of the Constitution".

The motion was adopted.

Article 67, as amended, was added to the Constitution.

Mr. Vice-President : The house stands adjourned till 10 A.M. on Wednesday, the 5th January 1949.

The Assembly then adjourned till Ten of the Clock on Wednesday, the 5th January 1949.

CONSTITUENT ASSEMBLY OF INDIA

Wednesday, the 5th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H.C. Mookherjee) in the Chair.

LETTER FROM THE PRESIDENT

Mr. Vice-President (Dr. H.C. Mookherjee): Before we start the business of the House, I would like to read a letter which I received last evening from our President. This reads:

> "I am thankful for your letter conveying to me your and the House's greetings of the season. I need hardly say how I appreciate such expression of goodwill. I am sorry I could not come even for the last few days of the current session. My plan to start on the first failed because I had fever on the 28th accompanied with severe cough."

Then he says:

> "I hope the House will excuse my absence in the circumstances. I am trying as best as I can to recover but somehow I have had a bad time for several months now. As the season becomes milder and warmer, I hope to improve as I do in all summers."

With the permission of the House, I would like to reply to this letter to the effect that we hope that he will not only recover but fully recover and will conduct the proceedings of the House in May next when we meet once again.

We now come to item No. 2, motion to be moved by the Honourable Sardar Patel.

GOVERNMENT OF INDIA ACT (AMENDMENT) BILL

The Honourable Sardar Vallabhbhai J. Patel (Bombay : General) : Sir, I beg to move:

> "That the Bill to amend the Government of India Act, 1935, be taken into consideration."

The measure before the House is a composite one, and in fact it covers a variety of fields of administration. By experience we have found that some changes in these directions are necessary, and in respect of one field, *viz.,* the States, it is found necessary statutorily to recognise the changes that have taken place in the States during the period of last year and also to regularise them. Now, the House is aware— at least many Members who attended the last session of the Assembly must be knowing— that the working of the Trade Disputes Act has created certain anomalies and difficulties. Under the Trade Disputes Act the provinces have set up Industrial Tribunals for the purposes of disposing of disputes. In the working of these Tribunals, decisions have been given by various Tribunals which are not uniform, at least as regards the principles underlying the decisions. This has created complications and there is a general desire that it would be desirable to have uniformity with regard to the principles governing these decisions. Therefore, the suggestion has been made to the Government that a Central Tribunal or Appellate Authority should be established so that the decisions of this Tribunal may set up a sort of Case Law which would be a guidance for the Provincial Tribunals as well as bring about uniformity in the main principles governing their decisions. Now, that is one thing.

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The other thing is that we had consulted the Provincial Governments and they have all agreed more or less in the necessity of a Central Board of Censors for films. In this respect also, the Central Government should have powers and for that purpose also we propose to introduce a sort of amendment in this Act. Both the Provincial Governments and the film industry have welcomed the Central Board of this kind which will lay down principles for uniform treatment of films and ensure that those principles are implemented in actual practice. Also we are experiencing constitutional difficulties in pursuing certain statistical enquiries. For all these reasons, it has become necessary to secure in the executive sphere power in respect of these matters.

We felt that the Dominion Legislature should have the power to confer such executive functions on the Dominion agency by law of the Dominion, and consequently an amendment was also considered necessary under Section 126-A of the Government of India Act, but after further consultation with Provincial Premiers who are naturally jealous of the powers of their legislatures and rightly sensitive to any encroachment on those powers, we propose to introduce with their advice and with their consent, an amendment of a restricted nature which confines itself to certain specific matters.

Again, the industrial policy of the Government of India makes it necessary that the Central Legislature should have powers in respect of a number of other industries. Firstly, these powers can be derived under Section 34 of List I of the Seventh Schedule, but as that gives Government power to legislate only on development, it is doubtful whether in relation to production, supply or distribution similar powers would be available to the Centre. The House will appreciate that, without such power, control on development will be unreal and ineffective. It is therefore proposed in the Bill to make some additions to the Federal legislative list, but subsequently after discussions with the Provincial Premiers to which I have already referred, it was decided to make an alteration in the arrangements contemplated in the Bill and to secure the object which we have in view by including certain matters in the scope of clause 2 as would be amended on the lines mentioned, in the Concurrent List. This would give the Dominion Legislature power to legislate in respect of these industries and also to confer executive power in respect of them.

I now come to clause 3 of the Bill. This amendment is considered necessary on account of the provisions of sub-section (3) of Section 61 of the Government of India Act, according to which the Legislative Councils of the provinces of Madras, Bombay, United Provinces and Bihar are permanent bodies subject to the condition that, as near as may be, one-third of the members of the Councils should retire every third year. The retirement under these provisions was due in United provinces in September last and the elections have already taken place there, but in Madras, Bombay and Bihar they are to take place in March or April. It is considered by those Governments that in view of the likelihood of the new Constitution coming into force in the near future further elections for the Upper Chamber which would become necessary by retirement should be avoided. In these circumstances, we have considered it necessary to take powers to extent the terms of office of members of the Councils who may be due to retire under sub-section (3) of Section 61 of the Government of India Act.

Now, I come to Clause 6 of the Bill. The House knows that as a result of merger agreements which have been signed by rulers, full jurisdiction in regard to administration of twenty five States in Orissa, fifteen States in Central provinces, three States in Madras, thirty five full-powered States and one

hundred and forty semi-jurisdictional States in Bombay, and three States in East Punjab has been handed over to the Government of India who have delegated their powers to the Provincial Governments concerned under the Extra-Provincial Jurisdiction Act which was passed by the Central Legislature. In addition to this, certain States have been taken over by the Central Government and entrusted to officers of the Central Government who have been appointed as Chief Commissioners and these are known as Chief Commissioners' provinces. These are, firstly, the East Punjab Hill States. They are about fifteen to twenty in number,—very small States—which have all been lumped together; and in view of their special condition we have taken them over and formed a Chief Commissioner's province. Other States taken over in this manner are: Cutch, Bilaspur and Mayurbhanj which subsequently been handed over to Orissa. These have been formed as Chief Commissioners' provinces. In the case of Cutch it has been done on account of its special position, namely, that it has a big, long border line with Pakistan and is an undeveloped area neglected for a very long time, with hardly any railway, no modern conveyance, no roads etc., and if you want to see a thousand-year old mediaeval State, Cutch is the only one in India. This State, however, has a first-class major port to be developed and the Government of India propose to spend a large amount of money on it. Then a railway from Cutch—metre gauge— is to be laid connecting it to Deesa. There is also a proposal to have another railway—broad gauge—right up to Viramgam. In these circumstances and because of the long border between the two Dominions, it was considered necessary to take over the State's administration and form a separate Chief Commissioner's province.

The legal position in regard to the administration of these provinces is that laws are made by notification issued in the name of the Chief Commissioner under Section 4 of the Extra-provincial Jurisdiction Act which was passed by the Central Assembly in 1947. The administration is carried on under the provisions of this Act either by the Central Government or the Provincial Governments. It is clear that the process of administrative integration which these agreements were designed to bring about has thus been partially achieved. The laws of the Central Legislature and the appropriate Provincial legislatures do not apply as such to the States which have been merged or which are being administered by these Chief Commissioners. The Finances of these States do not form part of the finances of the Dominion or the province concerned, but have to be kept separately for the time being. So we naturally considered how best we could bring about complete administrative integration, which was the aim and purpose of the merger agreements which have been signed by the rulers and accepted by the Government of India. It was at first thought that this can be done by an order under Section 290 of the Government of India Act by increasing the areas and altering the boundaries of the provinces, but Section 290 makes no mention of the acceding State and it is therefore extremely doubtful whether the Governor General is competent by an order under that Section to direct the integration of the territories of acceding States to the provinces. It is for a variety of reasons that these merger agreements were entered into and the integration of these States should no longer be delayed. It is therefore considered necessary to make in the Government of India Act of 1935 a provision enabling the governance of an acceding State or States, whose rulers have entrusted jurisdiction and power to the Dominion Government, either as part of a Governor's province or as a Chief Commissioner's province. Such a provision is necessary for political, constitutional and administrative reasons. Politically, it will hasten the process of integration and will provide a means for all these areas being represented in the legislatures of the provinces in which they have been merged. At present, although the States have been

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merged, there is no arrangement by which they could be represented in any manner in the provinces concerned. Constitutionally, the provision will enable the Dominion and the Provincial legislatures to have a legal basis for enacting legislation for these areas, and administrative convenience of complete merger is undoubtedly very great. There is also a provision in the Bill for adjustment of territories between a province and a neighbouring acceding State. If such adjustment is considered expedient or necessary for reasons of administration, it cannot be done at present. I might illustrate this by an example. There are about $12^{1}/_{2}$ villages which form the Chief Commissioner's province known as Panth Piploda, of which the House may know. These villages are not at one place and are situated at different places and are in such a position that their administration is practically neglected. The area cannot be governed properly and to have such a small unit of villages situated at different places is, constitutionally speaking, a problem which requires immediate solution. Now, these States, on account of their geographical position and other reasons, can only be properly merged or administered along with Madhya Bharat. They are all situated in the midst of this area.

I hope, Sir, that I have given the House sufficient justification for the measure which I have placed before the House. There are a large number of amendments proposed, particularly to clause 6. The list of amendments for which notice has been given is too long, but I hope I have given sufficient explanation for the justification for the Bill and honourable Members will reconsider them and it will not be necessary for many of them to be moved in the House.

Sir, I move that the Bill be taken into consideration.

Shri Yudhishthir Misra (Orissa : States) : Mr. Vice-President, Sir, I want to take part in the general discussion on the motion before the House and make some observations about the provisions of the Bill for the administration of certain States whose rulers have ceded full and exclusive power and authority to the Government of India. According to the provisions of the Bill, some States such as the States which now comprise the Himachal Pradesh will be constituted into a Chief Commissioner's province and other such as the Orissa and Chhattisgarh States, Deccan States and Pudukottah State will be administered as parts of the neighbouring provinces. The integration of the Orissa and Chhattisgarh States took place in January 1948 and since then these States have been under the administration of the provinces of Orissa and Central Provinces. The integration was the result of agreements between the rulers on the one hand and the Government of India on the other. The people of these States or their representatives never came into the picture. They were neither consulted about the process of integration nor was their opinion taken about the actual administration of the States to which they belonged. The right of self-determination has been denied to them as a result of which there is great discontent in these States. The popular opinion in the Orissa States as reflected through the Regional Council affiliated to the All-India States Peoples Conference, was not for unconditional merger. The Orissa States being educationally, politically and economically backward, they apprehended domination and exploitation by the province in services, legislature and in developmental schemes. Hence, their acceptance of the idea of one administration between the States and the province was conditional upon certain terms and conditions which should have been entered into between the people of the States and the province. This idea could not materialise as the people of the States were not taken into confidence and the agreement was purely the affair of the Government of India, the provincial Government and the rulers of the States. The unconditional integration of the States has to a certain extent, reduced the people of the States to subjection and justified the

apprehensions which they had entertained. To all intents and purposes they are treated as conquered people and instead of the Ruler's Raj there is in the States the Raj of the administrators. There is, no doubt, in each State an Advisory Committee, but the advice and suggestions of these Advisory Committees are never taken seriously. There are two Executive Councillors, as far as the Orissa States are concerned, but they are, I submit with all humility, mere show-boys and they are never consulted in important and vital matters.

Sir, in this connection, I beg to bring to the notice of the House that when the question of the personal property of the rulers was considered by the Government of Orissa and an agreement was entered into by the Government of Orissa with the rulers of those States, these Executive Councillors were never consulted and the wishes of the people of the States with respect to the property were never taken into consideration.

No doubt, Sir, certain measures have been taken by the Provincial Government to meet the demands of the States people, but they pale into insignificance in the face of the maladministration in certain cases that has taken place in the wake of integration.

Sir, corruption has increased and there is more exploitation than before. Every village has been converted into a liquor shop and the evils of drinking have increased. The medical grants for the purpose of medicine etc., for the State hospitals have been reduced. The substantial pay of some of the employees of the States, especially the low-paid employees, has been reduced and the primary schools which were managed by the respective State Governments have been converted into stipendiary schools as a result of which the teachers of these primary schools will not get any dearness allowance and the benefit of Provident Fund. In some of the States the road development programmes have been held up.

Now, Sir, it is proposed that besides the privy purse which has been granted to the rulers, the relatives of the rulers will be given some allowances. This idea of granting more allowances to the rulers of the States or their relatives is quite against the wishes of the people and there is no reason why these rulers should be granted more money than has been granted to them under the agreement. But, Sir, even against the wishes of the people, the Provincial Government is prepared to consider their cases. I do not know what has happened to that proposal. Now, Sir, before the integration of the States and after the integration, the Provincial Government had held out certain assurances to the people, saying that the Provincial Government will not reduce the pay, especially of the low-paid employees of the States and that the education and other amenities which the people were enjoying will not suffer in the hands of the Provincial Government, but in many cases these assurances have been falsified and the Provincial Government have not kept the promises which they held out to the people before integration.

Now, Sir, I submit that it is the duty of the Central Government to see that the States area should be given certain priorities in the developmental works by the Provincial Government and that the people of the States do not lose the little amenities of life which they were then enjoying. Therefore, I should have personally liked that before handing over the administration of the States to the Provincial Government, as is contemplated in the Bill, the Government of India should have instituted an enquiry into the present administration of the States and should have ascertained that nothing is done against the interests of any section of the people of the States.

Sir, in the amending Bill, a provision has been made to consult the Provincial Government for the purpose of passing orders by the Governor-General making the States parts of the province, but no provision has been made to

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ascertain the views of the people. When the fate of the people of the States is going to be decided, it is meet and proper that the people of the States should also be consulted. If it is not possible for the Government of India to accept this suggestion, at least the popular organisations of these States should be consulted, before the orders are passed, about the manner in which the States will form a part of the province.

Now, Sir, I think that for the interim period, before the new Constitution is adopted and passed, the representatives from the States should be consulted on all the problems which are special to them and that the administration should be carried on according to the advice of those representatives.

Sir, if no constitutional guarantees can be given to the people of the States, as I have suggested, I submit, that before making the order under the proposed Section 290-A, the Governor-General should give some directions to the province to act according to the advice of the representatives of the States on certain special problems.

Shri Ram Chandra Upadhyaya (Matsya Union) : *[Mr. Vice-President, as a representative of the people of the State, I welcome this amending Bill. In particular I support the amendment now being proposed in Section 6. I believe that it would be in the interest of the people. I, therefore, desire to make some observations in order to refute the remarks made in this connection by Shri Yudhishthir Misra. I may state that in my opinion this amendment is very much in our interest, and that if would not pay us if we begin to give too much importance to minor individual or group interests. Not many days ago the problem of the States was considered to be so difficult of solution that on the departure of the foreign rulers from this country the people of other lands seriously apprehended that India would be crushed out of existence under the heavy load of these States. It is a matter of deep congratulation, however, for the Government of India that it has felt the necessity of adding a new section, *i.e.,* Section 290-A, to the Government of India Act. It shows what great progress we have been able to make during this period of one year. It is my belief that we would soon be able to settle even the few matters that remain. I may in this connection drew your attention to what I consider to be a special feature of this Act, and it is the following:—

"Where full and exclusive authority, jurisdiction, and powers for and in relation to the Government of any Indian State or of any group of such States are for the time being exercisable by the Dominion Government the Governor-General may by order direct."

I believe that the shortest path that the people of the States need follow for securing a complete and final solution of the problem of the States is to induce the Princes of their States to transfer all their powers to the Government of India. A number of States, as Sardar Patel has already informed us, have agreed to adopt this course, but there are also quite a number of States who have not agreed to do so. I think, that after what has happened in Hyderabad, no Prince would dare raise objections to the adoption of this course of action. I have, however, apprehensions about the attitude of the new class of rulers—the class consisting of Popular Leaders—that is now emerging in the Indian States. What we have read about Bhopal is a matter of regret to us today as it was even before. Many of the political workers and popular leaders of the Indian States believe that they would be able to maintain their leading position only if the small States are permitted to maintain their separate existence. But in my opinion it is a grave mistake on their

* [ ] Translation of Hindustani speech.

part to entertain such a belief, and they are thus hampering the unification of India. It is a matter of great amazement that such people should hold the belief that a petty State like Bhopal can maintain its separate existence. Still more amazing is that traitors like Chaturnarayan Malaviya should hold the idea that they can maintain their leadership through the separate existence of such a small State as Bhopal. I have also come across a similar statement about the leaders of Tehri Garhwal. But if we desire to make India great and glorious it is our duty to disabuse the minds of our political workers of such notions. It has already been made clear by Sardar Patel and it is also plain to all of us that the Princes can no more stand in the way of the progress of India. At such a time it would be matter of deep regret if anyone of us put new obstacles in the path of India's progress. It is for this reason that I would like to emphasise again that it is our duty to define our objectives clearly and precisely.

Another feature of this section to which I would like to draw your attention is the provision for the transformation of some States into Chief Commissioners' provinces. I think that this is also a correct course to follow. I believe that we shall have to merge the States to form Chief Commissioners' or Governors' Provinces before we can merge them with the Indian Union. There are some people who claim that popular opinion should be ascertained before the adoption of this course. But in my opinion, if this was to be done the progress of the country would be considerably delayed. I am afraid that plebescite or referendum for this purpose would not be very useful, because the people of the States are so backward at the present time that they would not be able correctly to appreciate the issues involved and would not consequently favour the right course of action. India is taking big strides in the direction of progress. But her march towards progress would be retarded if we the people of the State begin to hold a referendum. I, therefore, urge that we should not insist on these claims. In my opinion it would be quite sufficient if the views of the Congress Party in each States are ascertained and acted upon in the matter of the merger of the States with one another. Any attempt to consult a widen section of opinion is likely to create serious complications.

Shri Yudhishthir Misra has remarked that in view of the unsatisfactory way in which the administrations of many of the States are working now-a-days one begins to entertain the opinion that the people were much better of before than what they are or would be when the proposals now being made for their welfare have been carried out. It cannot be doubted that previously when there were small States the people had some conveniences arising from the fact that the High Courts and the administrative headquarters were, on account of their proximity to the people, easily accessible to them. They could run to them and speedily secure the redress of their grievances. But this facility would no more be available to the people on the merger of a State with a big province. People, no doubt, attach quite a great importance to this facility. But it appears to me that we should not give any importance to our petty gains or losses of this kind in order that India, our country may prosper and progress.

We should rather think of the advantages we would have six months hence. It is only in our taking a long and not a short view of our interests that the good of India lies.]

Mr. Vice-President : You are not obeying the Bell.

Shri Ram Chandra Upadhyaya : *[It is quite possible that we may have difficulties for some times as a result of the merger of a State with any province.

For instance, if Dholpur or Bharatpur merge with the United Provinces, their people will have to travel a great distance in order to reach Lucknow or Allahabad. But we should remember that the other people of that province have also to travel great distances for the same purpose. I, therefore, submit that ignoring these minor inconveniences, we should concentrate our attention

* [ ] Translation of Hindustani speech.

[Shri Ram Chandra Upadhyaya]

only on the ways and means which would enable us to make our future glorious and bright and which would prove the most fruitful for us. I believe, in view of the above considerations, that Section 6, in the form it is drafted, is quite appropriate. We should, ignoring for the time being our petty difficulties, adopt it without any amendment.]

Shri B. H. Khardekar (Kolhapur) : Mr. Vice-President, Sir, I welcome this Bill. Actually it was overdue. This Bill will put an end to the anomalous position that has been created in the case of certain merged States. Of course, there are a few defects in the Bill. I will point them out later on.

First, Sir, I will make a few general observations and then discuss particulars. You know, Sir, the Englishmen left India .....

Mr. Vice-President : I suggest that the honourable Member refer to these clauses merely and that he could take part in the general discussion on the several clauses, especially clause 6 which is concerned directly with the States. In that way, we shall save the time of the House.

Shri B. H. Khardekar : Yes, Sir. I come to particulars. Sir, it is, now about eleven months since some of the States have merged; and because there was no such enactment, they could not be absorbed into the provinces. This Bill rights the wrong which has been there for a long time. In a short time, I will describe the nature of the wrong that was there. For these ten or eleven months, in most of the States, there has been what might be called the Administrator's autocratic rule. The disadvantages, some of them, of the provincial Governments crept in whereas the advantages could not be had. I shall give one notable instance, that of education. Particularly in one State, as also perhaps in several others, education in the last regime was entirely free, right from the primary up to M. A. and M.Sc. After the merger, fee have been imposed. As against that the teachers' salaries have unfortunately remained the same. Let me in a minute or two describe the nature of the Administrator's rule in general. These Administrators, most of them in all the important places, have been members of the old I.C.S. In our school we interpreted the I.C.S. as one who is neither Indian, nor civil nor a servant. Today, of course, he is mostly Indian, but the other description fits him. In most of the States, political life of whatever nature it was came to an end suddenly. In place of the old autocrat,—the old autocratic Rulers had ceased to be autocratic because some sort of constitutional rule was introduced—this new official autocrat came in. Sir, I will describe briefly the state of affairs in one State. Section 144 of the Criminal Procedure Code prevails permanently and there also partially was to be found and a certain group allowed certain facilities. There have been arrests, detentions, detentions without limit, for eight or nine months. That is why, Sir, most of the members here, who love personal liberty were very anxious that the expression 'without due process of law' should be included in article 15. A number of papers which even indirectly criticised or attempted to criticise the Administrator have been banned. The language of the civil servant is anything but civil. He uses such expressions as, "I will shoot you; I will imprison you; I will extern you, your family and your children". Such uncivilised bullies, unfortunately, bring discredit to the Government they represent. A certain high official was not only dismissed without powers, but he was actually served with a notice of externment. The position of that high official is very very high indeed. He is a former minister of a Provincial Government; he was a member of the Constituent Assembly and so on and so forth. If I am to use Parliamentary language and yet use the strongest expression, I would say, Sir, that this regime is the opposite of heaven. I would request the States Ministry to enquire into the conduct of such officials. I know that such officials, in some cases, came in, had to come in, as a result of certain

"pagal" ministries; but representatives of Government should not try to surpass the *"pagal"* ministry itself.

A defect in this particular Bill is that the provinces are to be consulted as regards the absorption of certain States; but the people of the States are not to be consulted. Self-determination is the very essence of democracy. If you are going to deprive the people of choosing their own province or Chief Commissioner's Province, you are really denying democracy itself. And that is why I would, when the time comes, support Pandit Thakur Dass's amendment. Now, Sir, I have a few words to say about the policy the Government of India have followed as regards merger. To Sardar Patel the Nation owes a great debt of gratitude for having made the map of India better, clearer and cleaner; but there has been certain misunderstanding as also certain defects in the policy of merger. The declared policy of the Government of India is that a State should merge only when the Ruler and the people so desire. First, I have my theoretical objection to this policy because we have declared the people to be the sovereign. Now suppose there is an obstinate Ruler who does not want to give away his rights as a Ruler and the people desire merger—as in most cases it might be so—what are we going to do? Then by some underhand methods we may have to persuade him. That is not proper. Then the other position is, most of the Rulers have suddenly become very patriotic and because they look more to their monetary financial interests they have decided to be loyal to the Indian Union; these persons who were enemies of the country and the people formerly, persons to whom the name of Gandhiji was something that infuriated them, persons for whom the very sight of Gandhi cap gave severe headache, such persons have become patriotic all of a sudden and have agreed to merge. I am not grudging this epithet which has been used by Sardar Patel to these people. After all in conducting State administration, some statesmanship is necessary and where a goat is to be sacrificed, it must be fed previously; so, where the States are to be wiped out, they may be flattered for a time. In this case what of the people? I want a very clear declaration on the point. Ultimately all States must go. I do not want relics of barbarism and feudalism to remain anywhere in this country. But the process of merger should be such that when the States are swallowed, no bitterness is left in the mouth and the merger should be for the happiness and for the good of all. So my recipe or my humble suggestion to Sardar Patel in this important matter—I know he is a very great man and he is a very practical politician—but as a youngster looking up to an elder with deep reverence and respect, I wish to throw a few humble suggestions. Sir, for the States—viable states which have not yet merged, a date should be fixed for the plebiscite. The people must be consulted; that is what I think; and three months previously the Ruler of the State concerned should be humbly advised to leave the State and go to some foreign country—Europe or America; let him enjoy himself. Then after a short time Sardar Patel should pay a flying visit to the State, discuss matters in a friendly manner with the leaders of public opinion. That would behalf the battle won. India, I think has got a magic weapon in the moral and spiritual armoury of the country and that magic weapon or mantra is Pandit Nehru. Just before the plebiscite Pandit Nehru should be persuaded to pay a flying visit and deliver a short lecture. I dare say there is not a single Indian heart that can possibly resist Pandit Nehru; by such means, by proper means—after all those of us who believe in Gandhism, we should not only have laudable and proper ends but our means also must be proper. So even when we are trying to do away with relics of feudalism, let our means be worthy of the Father of the Nation.

Shri Rohini Kumar Chaudhari (Assam : General): Mr. Vice-President, Sir, in my opinion the question which is to be considered by the House is not so much the merits of the provisions of this Bill, but the question is one of

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principle as to how far will you allow the Dominion Government to interfere in the provincial affairs. I quite admit, Sir that in cases of emergency, it is expedient and not only expedient but desirable that the Dominion Government should have the right of interference and we have to consider how far these provisions of this Bill have kept within its limits, reasonable limits of interference or whether at any time the powers which have been sought to be exercised by virtue of this Bill are liable to be abused and cause discontent in the administration of provinces. Sir, there have been a number of amendments to this Bill before us. I can safely predict that most of these amendments will not be moved and much less carried, excepting perhaps in the case of my honourable Friend the Premier of U.P. whose weight, I believe, will enable him to carry some of his amendments. I find a curious coincidence so far as the amendments to this Bill are concerned. I find most of the clauses are not wanted by some member or the other. For instance, clause 1 is not wanted and there is an amendment for deletion of this clause by no less a person than my Friends Mr. Krishnamachari and Mr. Bharathi. Deletion of clause 2 is wanted by the Honourable Pandit Pant and deletion of clause 3 is wanted by my honourable Friends Mr. Chaliha and Mr. Lakshminarayan Sahu. Deletion of clause 4 is wanted by Rai Bahadur Lala Raj Kanwar. Deletion of clause 5 is wanted by the honourable Pandit Kunzru. Deletion of clause 6 is wanted by Rai Bahadur Lala Raj Kanwar. Deletion of sub clauses (b) and (c) of clause 7 is wanted by Mr. T.T. Krishnamachari. Therefor, Sir, if you are going to allow all these movers of amendments to have their way, very little will be left of the Bill itself. (*Laughter*). It seems to me, Sir that the only clause which is wanted by the Members of this House is sub-clause (a) of clause.....

Mr. Vice-President : How do you find that all the Members will want to have even that?

Shri Rohini Kumar Chaudhari : I find all the other clauses are not wanted by one Member or the other clauses are not wanted by one Member or the other and so.....

Mr. Vice-President : Then all that you can logically infer is that ten persons do not want seven clauses. As I was taught in my school days, this is what one would call the dangerous inductive leap.

Shri Rohini Kumar Chaudhari : That is quite correct, Sir. This is a Bill of seven clauses, six of which are not wanted by some one or the other and so the only clause which the House unanimously desires to consider is sub-clause (a) of clause 7, in respect of which there has been no amendment for deletion.

Shri T. T. Krishnamachari (Madras: General): Not correct.

Shri Rohini Kumar Chaudhari : And therefore, Sir, ...

Mr. Vice-President : An honourable Member says that even that statement is not correct.

Shri Rohini Kumar Chaudhari : May be so but in any case that is the most important provision of this Bill, and I would warmly support the proposal of the provision contained in this Bill to the effect that the development of industries should be left, in deserving cases, in the hands of the Dominion Government. I have watched with close interest the process of development of industries in the various provinces, and I have to say it with regret that if this matter had been left entirely in the hands of the Dominion Government, we could have seen greater development of our industries even within the short time in which the National Government has been functioning. Therefore, I have not the least hesitation to support that clause, I mean that portion of the clause, where development of industries has been sought to be

taken entirely by the Government of India. But I do not agree to the latter portion of this clause, namely, that trade and commerce within a province, and production and supply of goods, should at any time be left entirely under the control of the Government of India. I am of the opinion that as far as the production and supply of particular commodities are concerned, no restrictions should be imposed upon their supply to a province, if they do not want it or if they would like to have it substituted by some other article, It may seem as if I am anticipating matters, but all the same, I humbly submit that the proposal which has been mentioned in the amendment proposed to be moved by my honourable Friend Pandit Pant should receive the support of the entire House, and the Provinces should be left free to exercise their own discretion in the matter of trade and commerce in a province in which the industry exists.

With these words, I wish to close my remarks.

Mr. Vice-President : Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Mr. Vice-President, Sir, I am in general agreement with the principles of the Bill, except as to a single point, and that is in regard to a portion of clause 6.

Mr. Vice-President : If that is so, may I appeal to you not to take more than five minutes?

Mr. Naziruddin Ahmad : Sir, five minutes will be more than amply sufficient for me.

Sir, with regard to this clause, all that I object to is as to the provision for incorporating certain acceding States *as part* of a Governor's Province, or of a Chief Commissioner's Province. Sir, it is not on political considerations that I raise this point, but purely on legal considerations,. It should be noted that the Honourable Mover of the Bill when he introduced it, he was simple Sardar Patel, but today I am happy to feel that he is already a Doctor of Law, a degree which he richly deserves, and I believe the legal considerations which I shall submit before him will receive his personal consideration.

Some of the States have acceded and have transferred their right of management or 'administration' of these States to the Dominion Government to be '*administered*' in any manner they please, and through any agency they please. My point is and I shall develop it later on at the appropriate stage, that this concession on the Part of the Rulers of those States, to allow the *administration* of the States, does not include the power to convert these States, into so many Provinces and incorporate them as parts of a Province so as to absolutely lose their identity or their integrity. That is a kind of power which has not been given by the agreement.

Shri M. Ananthasayanam Ayyangar (Madras : General) It is only "as if" such area formed part of.....".

Mr. Naziruddin Ahmad : I have noted the words "as if". But even then, it assumes powers which as I shall submit later on, cannot be justified by constitutional considerations.

Sir, these States were absolutely free when the British left. The only relation between these States and India would be dependent upon an agreement or the Instrument of Accession or Supplementary Instrument of Accession. There has already been an Instrument of Accession and later on, a fresh agreement delivering the right of management of these States to the Government of India. But in conceding power of *administration* of these States, the power to incorporate them into a Province and to put them together in a manner which will make it impossible for anyone to separate them later on, I submit, has not been given and would be beyond to separate beyond the scope

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of the agreement. The whole situation, as I shall submit later on, is a question of construction of the second agreement.

Sir, at this stage, I do not desire to take up the time of the House and elaborate the point. With these few words, I support the general principles of the Bill all through, except that portion of it to which I have referred.

Maulana Hasrat Mohani (United Provinces : Muslim) : Sir, I think that if my honourable Friend, Sardar Patel, is determined to put the cart before the horse and you are determined to support him in this view, I am afraid there is no occasion to discuss this Bill now, considering the Objectives Resolution of this Assembly which definitely stated—

"This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent, Sovereign Republic....."

Sir, I submit that the whole of the Government of India Act of 1935 is based upon a foolish theory of the dominion-hood of India. Every word of that Act is based upon that theory, and if we have to carry out our determination and achieve the objects set out in Objectives Resolution, I think there is no occasion, and it will be simply a waste of time and energy—to discuss this wretched thing, the Government of India Act, 1935. Where is the use of it ? Of course, if we have got some secret understanding that you have resolved that in spite of you declaring yourselves a Republic, you will remain within the British Commonwealth, and if you are going to coin some new phrase as I said sometime ago, if you say that you will be a republic dominion, as Holland is, proposing to do with Indonesia, and if that Republic will remain in the arms of the Commonwealth, we will be making fools of ourselves. If we accept this Bill, we may become a Republic, but ours will be a republican dominion. We will still be staying within the 'British Commonwealth. Sir, even if the word 'British' is dropped from the British Commonwealth', the position will be no better, because, if we remain in the Commonwealth it will mean that we will have to co-operate with the other nations thereof. Once we begin this, we will have to co-operate with the Western Bloc or the Western European nations. This will be something very bad. It will mean that we will have to co-operate with Holland and Belgium and with the rest of the Western Bloc which has been formed with the express purpose of opposing Soviet Russia. If a war breaks out in future between the Anglo-American Bloc and the other side, we will have to co-operate with the Western Bloc. It will mean that we say good-bye to our determination to remain neutral in any future world war. It will mean that we give up everything for which we have stood for. If we say at this stage that we are going to leave the British Commonwealth and if we say that we will become a republic, there will remain no link of the British Crown. If there is no link of the British Crown, then what will be the basis of our remaining within the British Commonwealth? People say it will be on the basis of common citizenship and that the first citizen will be the British King. Sir, to this I say that when we see the attitude of South Africa, New Zealand and Canada, it is absolutely futile to accept any common citizenship— Therefore I say that we will have nothing to do with any citizenship common citizenship or first citizenship. We will have no longer anything to do with this tom-foolery. Therefore if we are determined to establish a Republic in India, by all means attempt to introduce it and reject the 1935 Act and everything connected with the dominionhood of India. Everything else is futile and absolutely irregular. I say it is immoral to do any other thing at this stage.

Sir, I wanted to say this in the beginning when my Friend the Honourable Sardar Patel introduced this Bill. I wanted to oppose him in the beginning. But unfortunately you, Sir, did not catch my meaning, ruled me out of order and put my opposition to the vote without giving me any chance to express myself. I take this chance of expressing myself. For the reasons given

above, I request my honourable Friend Sardar Patel not to waste time and energy on such a wretched thing as the Government of India Act, 1935.

Shri T. T. Krishnamachari : Sir, I move that the question be now put.

Mr. Vice-President : I think we have devoted sufficient time to the general discussion. Altogether seven honourable Members belonging to different parts of India, including the States people who I understand are vitally concerned with the Bill, have spoken. I shall now put the question.

Does Sardar Patel wish to give any kind of reply ?

The closure is of course, accepted.

The Honourable Sardar Vallabhbhai J. Patel: Sir, there have been a few speeches on this measure, but all of them were restricted to the provisions which relate to the States. In other respects there has been no discussion at all, and I take it there will be hardly any time spent on those clauses.

Sir, so far as clause 6, which affects the States, is concerned, I find from the general tenor of the speeches that those who spoke supported more or less in every way, the general principles of the Bill. Some of the criticisms were, to my mind, irrelevant in the sense that some of them questioned the manner in which the merger has taken place, and some related to the question of changes in the administration adversely affecting the area which has been merged. For instance, an honourable Member from Orissa who first spoke, while supporting the measure, complained about some changes that have been brought about by the merger in the area of the State administration. He pointed out that some of the facilities they were getting when the area was administered by the ruler were not being given, after the merger, by the Orissa Government. It is quite possible and conceivable that a benevolent ruler might have spent some more money for the good of the people in that area and that the Orissa Government might not have found it possible to do so in that particular area in that particular form. I may say that the whole idea of merger, as conceived, is not to keep small bits of territories separately for the purpose of administration. When a merger has taken place it is possible that they may lose some smaller or minor advantages. But the whole idea is to look at it from a broader point of view and to have a better administration on the whole and to bring backward areas to the level of the provincial administration. Now, when you want a larger good to be obtained, it is quite conceivable that you may have to make smaller sacrifices. But when it is proposed to merge these areas, the smaller sacrifices should not be considered worthy of complaint. Otherwise merger would be impossible.

Now, the honourable Member from Alwar talked about Bhopal.

Shri Biswanath Das (Orissa : General); I am not rising to a point of order. On a point of information may I ask the Honourable Minister for States whether it is not a fact that the Government of Orissa have in this year's budget allotted fifty lakhs of rupees for the benefit of this very state over and above the income derived there from ? May I know whether this information is correct ?

The Honourable Sardar Vallabhbhai J. Patel : That is really supporting what I have already stated that they may make smaller sacrifices but get larger good. If the Orissa Government has provided large sums of money in their budget for these areas, there is nothing very surprising in it. Indeed they are expected to do so, and if the Orissa Government takes care that the interests of these small areas are looked after properly which I have no doubt they will do, this complaint which is based on an apprehension will soon disappear. Therefore the honourable Member who first spoke on this question will take note of the fact that the Orissa Government is anxious to give all facilities and perhaps more than they were getting when the administration worked as a smaller unit.

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Now, referring to the question which was raised by the Honourable Member from Alwar about Bhopal, I do not wish to say anything about questions which are not yet settled and which are under discussion as any discussion of the question may result in prejudicing such issues. But I have already assured all that if the people of any State want a merger or want to join the Union, there will hardly be any strong objection from any rules because I do not conceive the possibility of the existence of smaller units against the wishes of the people. So, if the people of Bhopal want union or merger with any adjoining area, I have no doubt that the Ruler or the Nawab of Bhopal will not come in the way, because after all in this age no Ruler can safely defy the wishes of his people. That is really the idea of democracy; and when we are now beginning a democratic form of Government all over India, smaller units cannot stand if there is such a severe conflict between the Ruler and the ruled. The fault lies not with the Ruler but with the people themselves. You know that wherever ministries are formed even in the smaller units, ministries create a sort of vested interest and the ministers are not willing to merge and are stronger in their will to remain separate than the Ruler himself. So a general discussion about the question of merger of the States that remain now is not very advisable. It is better to work among the people of the States than to raise the question here, but you can trust us to do all that is possible to bring about uniformity all over India with the consent of the Rulers as well as the ruled. There will be no obstacle if all people consider the interests of the people concerned instead of their own personal short-sighted interests of office or vested interests.

Now the honourable Member from Kolhapur raised several controversial issues so far as the administration of Kolhapur is concerned. I do not think it would be wishes to go into the administrative routine and the difficulties of that administration at this stage. Perhaps the House is aware of the Committee of Enquiry which was appointed by the Government of India to go into the administration of this State, presided over by a Judge of the High Court of Bombay. The Report of Justice Coyajee has already been published and I would request those honourable Members who come from the States and who are interested in this affair to read that report. It is a very sad state of things which has been described in that report. After the unfortunate incident of the murder of Mahatma Gandhi, a group of people took it into their heads to harass and molest people called Brahmins in that area, because a Brahmin young man was supposed to be responsible for that murder. A whole family bearing that name was burnt alive. Several houses of the Brahmins were burnt, property looted and tremendous persecution and torture was practised on a large scale. There was a popular Ministry at the time. There was no administrator at the time. Our friend from Kolhapur said that the administration of the administrator who was a Civil Servant was the opposite of heaven in Parliamentary language. You ask those people who suffered during the days of persecution whether what he described as a popular government was really heaven or hell of the worst type. I do not think we would be justified in being proud of our democracy if popular administrations behave in this manner. It is a very sad thing. We appointed an administrator with the consent of the Prince. The Prince asked for an administrator. That report condemns the Ministers. I do not wish to proceed further in the matter. What he says is that a time should be fixed by which a plebiscite can be taken of the people of Kolhapur for the merger. Evidently from his speech I gather that he is against merger. Well, we are not forcing merger on the people of any area or any State if the people do not want merger. If the people stand for merger at one time and at another time for keeping the State separate, if they want

merger if there is no ministry and are against merger if they are in the ministry, it is not easy to take a plebiscite, there is a danger of terrorising people and practising criminal acts of violence on a very large scale. I can assure the House that no State has been merged against the wishes of the people and there have been no complaints in the case of any merger up till now. In future also there will be no complaints from any quarter except those who stand out against the general wishes of the people of that area for personal reasons. Whatever we have done up till now has been done with the will and the free will of the Princes as well as of the people of that area. I can say this also, that some of the Princes, smaller Princes, who first signed the merger agreement, long time afterwards on second thought complained, perhaps on some advice given to them by some lawyers, and wanted to question the merger agreement in court. I advised them not to waste money over lawyers and courts and that if they wanted to go back on the merger agreement, I would tear up the merger papers and allow them to go but that they should not return and come to me for safety or security. When I accepted their merger, it was at a time when I had to give them protection because the administration that they were carrying on in those areas was so unpleasant that the people in some cases took possession of the palaces. Therefore, the question of a merger now is not very important because most of the States have either formed unions or have merged and there are those that have remained out. There are Princes who, if they are convinced that it is in the interest of the country as a whole that they should make further sacrifices, will be prepared to do so. If there is any Prince who takes a recalcitrant attitude, then it will not be for me to do anything in the matter. It will be between him and the people to settle accounts.

Therefore, to the honourable Member who has come from Kolhapur, I give this warning: that I do believe that a large majority of the people of Kolhapur wants a merger, and if I can convince the Prince or the Ruler for a merger, then those who stand out against the merger will have no mercy later on. When the world is progressing rapidly, people who put obstacles will have to find out other venues than this.

We want to finish this process of removing these administrative ulcers in the country in small bits, on account of which we have so many difficulties. I appeal to all those who come from those areas to be more reasonable and more sensible and not to talk of what was being done in the past. Here my friend quotes examples of his administration of the education department in his time when there was no administration in Kolhapur. A little efficiency in education in his time is nothing when we see the miseries through which the people have had to pass recently. But after all, what is going to happen after the merger? As it is, it is going to be merged in the Bombay Province. At any rate Kolhapur will have to admit that merger with the province of Bombay is not going to bring about inferiority or in efficiency of administration.

Now there is our Friend, Mr. Naziruddin Ahmad, who is afraid of the administrative entity being destroyed or the State's entity being destroyed. I do not know whether he is a legal objection or just qualms of conscience. But I would say that with regard to the States that have merged, the Rulers and the people have voluntarily ceded all their administrative jurisdictions. Except for the privy purse and certain other rights about their prestige and position which have been secured to them, the rest has been ceded to us and there is no illegality involved in them. If he says that the people have not been consulted, I will ask him to point out one place where this is so. If people do not complaint, it is because we have as certained the wishes in the form in which wishes can be ascertained in this area. You will admit that there are no electoral rolls. There is nothing in that form to ascertain the wishes, except keeping your fingers on the pulse of the people and it is for this that there is no complaint from them.

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Now, there is our Friend, Mr. Rohini Kumar Chaudhari, who in his analysis of the amendments has negatived the whole Bill. I need not say anything about that. But he has referred to only one question—that of the Industrial Bill and he supports it. So it requires no answer.

I do not know whether I can say anything about Maulana Hasrat Mohani. Now that he finds that this House is not supporting him and is not exercising its own sovereignty which he claims, it will be against his conscience to sit in the House. He had better not take part in its proceedings which do not conform with his principles.

Maulana Hasrat Mohani : I will not allow you to have your way. I am here for that purpose.

The Honourable Sardar Vallabhbhai J. Patel: That is all I have to say. I am glad that the House has supported the Bill generally and we may now proceed to discuss the amendments.

Mr. Vice-President : The question is:

"That the Bill to amend the Government of India Act, 1935, be taken into consideration at once."

The motion was adopted.

Mr. Vice-President : I find that there is an amendment, No. 4, in the name of Shri T. T. Krishnamachari and Shri L. Krishnaswami Bharathi and also that there are two amendments to this amendment.

Shri T. T. Krishnamachari : With your permission and the permission of the House I would like to move amendment No. 1 in the supplementary list instead of No. 4 in the original list. Sir, I move:

"That after clause 1, the following clause be inserted:

Interpretation—

'1A. The Interpretation Act, 1889, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament.' "

This is more or less a formal amendment in that it provides for the interpretation of this Act. The Act that is referred to have happens to be the Interpretation Act of 1889 of Great Britain. Originally as the Government of India Act stood, because it was enacted by the British Houses of Parliament, this Interpretation Act applied. But in the present setting this Act will not apply unless special mention is made in the body of the Bill to that effect. I therefore hope that the House will accept the amendment.

Mr. Vice-President : The next amendment is in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, with your permission and the leave of the House, I would like to move my amendment in a modified form, which is consequential upon a change in the original motion. I desire to move an amendment to the motion put to the House by Shri T. T. Krishnamachari namely, that Clause 1-A be inserted in the form in which it appears in the supplementary list No. 1. I shall not move for the deletion of the whole clause but only the latter half. Sir, I move:

"That in amendment No. 1 in the supplementary List, in the proposed Clause 1-A, the words 'as it applies for the interpretation of an Act of Parliament' be deleted."

In deleting these words I fully support the principle that the Interpretation Act of 1889 should apply to the interpretation of this Act. In fact this amendment really removes an anomaly. To all Parliamentary Acts the Interpretation

Act of 1889 applies and therefore it applies to the Government of India Act also. But the present Bill says nothing to indicate in the Bill as to what Interpretation Act would apply,—the British Act or the Indian General Clauses Act. It is doubtful if the latter Act applies to the Bill. This amendment really removes this doubt. The words which I desire to delete are merely arguments in support of the operative part of the clause. The clause with the amendment would read:

"1-A. The Interpretation Act, 1889, applies for the interpretation of this Act."

I submit that this is quite enough. The last part "as it applies for the interpretation of an Act of Parliament" merely supplies an argument or a descriptive clause. As no argument or descriptive clause of this nature is permissible in a legislative enactment these words should be deleted, not that the argument or the explanation is invalid,—the argument or the explanation is quite proper—but this should be removed from the effective part of the clause. I hope that the House would consider this point.

The Honourable Shri B. G. Kher (Bombay: General): Sir, the honourable Mover of the amendment has not given the reason in his amendment but has indicated the manner in which the Interpretation Act applies. "As" means "in the same manner as". The honourable Member, Mr. Naziruddin Ahmad has understood the word "as" in the sense of "because", as if the mover of the original motion had intended to give an argument.

Mr. Vice-President : The question is:

"That after clause 1, the following clause be inserted:—

'1-A. The Interpretation Act, 1889, applies for the interpretation of this Act as it applies for the interpretation of an Act of Parliament.' "

The motion was adopted.

Mr. Vice-President : Since the House has adopted the first amendment it means that the House negatives the second one in the name of Mr. Naziruddin Ahmad. I shall now put clause 1-A to the House:

The question is:

"That clause 1-A stand part of the Bill."

The motion was adopted.

Clause 1-A was added to the Bill.

The Honourable Dr. Syama Prasad Mukerjee (West Bengal : General): Sir, I beg to move:—

"That for clause 2, the following be substituted :

'2. *Amendment of section 8 of the Government of India Act,* 1935—

In section 8 of the said Act,—

(a) in clause (i) of the proviso to sub-section (1); after the words 'in this Act' the words 'or in any law made by the Dominion Legislature with respect to any of the matters specified in the next succeeding sub-section' shall be inserted; and

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

(1-A) The matters referred to in clause (i) of the proviso to sub-section (1) of this article are—

(a) industrial and labour disputes;

(b) trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest;

(c) the sanctioning of cinematographic films for exhibition; and

(d) inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List.' "

[The Honourable Dr. Syama Prasad Mukerjee]

Sir, when clause 2 was inserted as drafted, the idea of the Government was that in respect of the entire Concurrent List it should be open to the Dominion Legislature to pass laws for the purpose of exercising executive function. At present so far as the Concurrent List is concerned the Dominion Legislature may pass laws which will supersede any laws passed by the provinces; but so far as executive authority goes, it can be discharged only by the provincial governments. In the new constitution, under article 60 which has already been adopted, it has been laid down that even with regard to the Concurrent List it will be open to the Dominion Parliament to pass laws for the purpose of exercising executive action. The question arose whether any such powers should be taken over by the Dominion Parliament during the interim period. At present under the Government of India Act, the Dominion Parliament and the Dominion Government can exercise authority in respect of matters which normally fall in the Concurrent List in three ways. We have the Essential Supplies Commodities Act which relates to certain specific commodities such as food stuffs and certain other commodities in respect of which the Dominion Parliament and the Dominion Government have complete legislative and executive powers. This power will lapse in 1951. Secondly, we have a provision which lays down that development of industries which, in the opinion of the Dominion Parliament, is of all-India importance, can be taken up by the Dominion Parliament. But that relates only to the development of any industry which may be so described by the Dominion Parliament. It has been felt that in respect of industrial development it is not sufficient that the Dominion Parliament or the Dominion Government should have power only for the purpose of developing industries which are deemed to be of an all-India importance. Development has been interpreted to exclude regulation and control of such industries and also trade and commerce in such industries, control of production and distribution of the products of such industries. For that purpose it was first thought expedient that wide powers might be taken by the Dominion Parliament even during the interim period by a suitable amendment of the Government of India Act. Apart from industrial development there were certain other matters like statistics, censoring of films and also industrial disputes, in respect of which it was thought desirable that the Central Government should take adequate powers.

So far as industrial and labour disputes are concerned, as has been explained by Sardar Patel, this is a Provincial subject, but it has been felt desirable that there should be some uniformity of legislation followed by necessary executive action with regard to the industrial tribunals which may be constituted under Provincial laws for the purpose of settling disputes. After consultation with the Provincial Government and some of the Provincial Premiers, and representatives of Provincial Governments who were present in Delhi, it has been deemed desirable that during the interim period completely wide powers need not be taken over by the Government of India, but a suitable amendment may be made only in respect of those particular items which are now of an urgent character and which require an immediate solution. For this purpose, you will find from Amendment No. 9 that we have referred to industrial and labour disputes, trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest: the sanctioning of cinematographic films for exhibition; and inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List. This will mean a consequential change in clause 7, as originally provided in the Bill. The latter portion of clause (a) will be omitted and put in the Concurrent List. The result will be that so far as legislative powers are concerned, the Dominion Parliament will have ample

powers to pass laws wherever necessary and such laws will supersede provincial laws, if any; so far as the executive authority is concerned in respect of these matters, it will also be open to the Dominion Parliament to pass laws and take over responsibility for executive administration, in case such a step is considered to be desirable or necessary. Sir, it is not intended that the Provincial Governments should not be utilised for purposes of co-ordinating the policy of the Central Government even in respect of those matters where central regulation and control are necessary in the interests of the whole country. Obviously in normal circumstances, the executive machinery, which will be utilised, will be the Provincial Governments themselves. But if an occasion arises when it is necessary for the Central Government to exercise executive authority in respect of matters, which are considered to be of an all-India importance, power to do so has to be taken over by the Government of India and the Dominion Parliament. A question has arisen whether this power should be exercised by the Dominion Legislature without consultation with the Provincial Governments. Hitherto whenever the Central Government or the Dominion Legislature had an occasion to take steps for introducing legislation for development of industries, previous consultations did take place with the Provincial Governments. I believe on a suitable occasion when the matter comes up a little while later, Sardar Patel will give an assurance on behalf of the Government that during the interim period before the new Constitution comes into force, if it is necessary for the Central Government to move in accordance with the powers which are now proposed to be taken under Amendment No. 9, previous consultation with Provincial Governments will always be held and the results of such consultation will be placed before the Legislature for information.

With these words, Sir, I move that the amendment be accepted.

Mr. Vice-President : There are four amendments to this amendment, which I shall call out one after another. The first is by Mr. Naziruddin Ahmad. No. 3 in the list.

Mr. Naziruddin Ahmad : It is only a formal amendment and therefore, I am not moving it.

Shri T. T. Krishnamachari : Mr. Vice-President, Sir, I move:

"That in the new clause 2 proposed for substitution by amendment No. 9 of the original list of amendments, for the words 'said Act' the words, figure and brackets 'Government of India Act, 1935 (hereinafter referred to as the said Act)' be substituted."

This is a formal amendment, which makes the amendment moved by my honourable Friend Dr. Syama Prasad Mukerjee complete. I hope the House will accept it.

Pandit Hirday Nath Kunzru (United Provinces : General) : Sir, it is unnecessary for me to move my amendment in view of the amendment moved by Dr. Syama Prasad Mukerjee.

Mr. Vice-President : Clause 2 is now open for general discussion. Pandit Kunzru will kindly come to the mike.

Pandit Hirday Nath Kunzru : Mr. Vice-President, the Statement of Objects and Reasons appended to the Bill before us asks for more executive power for the Government of India in the interest of the establishment of uniform principles with regard to the review of awards made by the Provincial and Central industrial tribunals. Sardar Patel, in asking that the Bill be taken into consideration also dwelt on this matter only. I think, therefore, that I am justified in concluding that this is the only reason for which Sardar Patel is asking that the Dominion Legislature should have power to confer

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executive functions on Central officials in connection with laws relating to the concurrent field.

It is obvious, Sir, when one reads the amendment proposed in the Bill that it goes far beyond the needs of the case. The question that is being discussed now was raised by me in connection with article 60 of the Draft Constitution which was discussed the other day. My honourable Friend Dr. Ambedkar was unable to accept my point of view and in the course of an excellent speech gave what he thought were convincing reasons against the acceptance of my amendment. This Bill only seeks to bring the Government of India Act in line with the Draft Constitution. I should have thought therefore that the matter had been finally decided by the Constituent Assembly and that it would not come up for consideration again. It seems now, however, that the House is prepared to accept the point of view, that I fruitlessly urged the other day, in connection with the amendment of the Government of India Act, 1935. I do not know, Sir, whether the Provincial Governments will be able to enjoy the freedom that they seek to have only till the Draft Constitution comes into force or whether the amendment moved by my honourable Friend Dr. Syama Prasad Mukerjee means that the House is prepared to revise its opinion in connection with article 60 of the Draft Constitution. For my part, Sir, I welcome the amendment moved by Dr. Mukerjee.

Sir, Dr. Ambedkar said the other day in the course of his speech to which I have referred that it was necessary that the Dominion legislature should be in a position to pass laws extending the executive power of the Dominion officials to matters relating to the concurrent field. To explain what he meant he referred to any legislation that the Centre might pass in regard to untouchability and the failure of the provincial Governments to give effect to the Child Marriage Restraint Act. It is undoubtedly desirable that when the Central Legislature passes a measure it should be loyally given effect to by all the provinces. But, it is quite possible that in some provinces there may be little sympathy with a measure that has found favour with the Central Legislature. My honourable Friend Dr. Ambedkar said that in such a case it was eminently desirable that the Central Legislature should be able to authorise the Central officials to see that the law passed by it was properly executed.

Shri T. T. Krishnamachari: Not always.

Pandit Hirday Nath Kunzru : I have referred only to the two illustrations given by Dr. Ambedkar and I do not think that I have so far unfairly summarised his arguments.

Sir, I think that if the Central Government went so far as to appoint officials of its own to give effect to anti-untouchability laws or the Child Marriage Restraint Act, it would find itself in a serious predicament. The magnitude of the task would, I think, be beyond its powers and the consequences of its coming into conflict with provincial Governments would be so unwelcome that I am certain that any power that the Dominion legislature may have to authorise the Dominion officials to execute certain laws relating to the concurrent field is not likely to be exercised in practice. My honourable Friend Dr. Ambedkar referred to the case of Australia in respect of which I had made an erroneous statement. I accept Dr. Ambedkar's correction. But although the Commonwealth Government in Australia can ask its own officers to execute laws passed by it even in the concurrent field. Australia is, in respect of population, a very small country. I am not aware that in practice, in matters of any importance, it has actually asked the Commonwealth officials to execute laws that it should be the proper responsibility of the States

Governments to enforce. In a country like India, Sir, though the Union legislature may be authorised to confer executive functions as respects laws relating to the concurrent field on Dominion officials, the size and population of the country would render it virtually impossible to put such a law into practice. I think, therefore, that the amendment moved by Dr. Syama Prasad Mukerjee is timely. It reminds the House that it is going too far in its desire to have a strong Centre. We all desire a strong Centre. We do not want that the Central authority should be unable to enforce obedience to its laws in vital matters. The unity and integrity of India depend on the authority and prestige of the Central Government. But there is a limit that must be set to the powers of the Union Legislature and the Union Government. We should not in pursuance of a theory make ourselves responsible for a policy that might lead to serious consequences. It seems to me that the amendment moved by Dr. Syama Prasad Mukerjee is going to be accepted by the House, but I hope that its acceptance will lead to a reconsideration of the decision the House has already arrived at in connection with article 60 of the Draft Constitution.

Shri B. Das (Orissa : General): Sir, I was all along unhappy since this Bill was circulated, that this Bill should try to incorporate absolute executive powers which the British Government took in its hands since 1939 in one shape or other. Consequently, Sir, I welcome the amendment which my friend Dr. Syama Prasad Mukerjee has moved whereby the executive power has been restricted. I am glad he has the support of Pandit Govind Ballabh Pant and that the amendment was jointly tabled by my honourable Friends Pandit Pant and Dr. S. P. Mukerjee. Sir, I think the House is very restive over any encroachment of democracy inside the Government as well as outside the Government. This is not the first occasion on which I have spoken of that reprehensible measure-Section 126-A of the Government of India Act, 1935, which the British House of Commons passed in 1939 and gave retrospective effect to it from 1937. Clause 2 wants to incorporate one of the original sub-paras of Section 126-A. Clause 5 wants to incorporate another sub-section of that reprehensible measure passed in the House of Commons after the War in 1939.

Sir, democracy is under trial and it is particularly under trial in a new Sovereign State like India. The foreign rulers ruled India and looked at India through Section 126-A. I cannot understand how the legal advisers of the Government of India or even how the Constitutional Adviser of this august Assembly advised that in peace time Section 126-A in its various forms should be incorporated in the first Sovereign Bill that this Sovereign House is going to pass. It was a great surprise to me and it gave me great pain. Today I feel relieved that Dr. Mukerjee had voiced the differences which the Government of India has itself had and I wholeheartedly support the motion. I hope later on my friend Pandit Pant will move the other amendment to delete clause 5. I am happy this Sovereign House is functioning as a democratic legislature and not going to give its Government autocratic powers that are required in time of war and not in time of peace.

The Honourable Pandit Govind Ballabh Pant (United Provinces : General): Sir, I had given notice of a similar amendment. In fact my name is coupled with that of Dr. Syama Prasad Mukerjee with regard to the amendment which he moved a few minutes ago. I consider it necessary to make a few observations as my reasons for giving notice of the same and identical amendment may not be identical with his. So while welcoming and supporting this amendment, I should like to state why I have considered it necessary to do so.

Section 8 of the Government of India Act gave the Federal Centre the power to appoint its own executive organization only with regard to matters included in List I. Every Federal structure involves distribution of legislative

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and executive functions, powers and duties. The jurisdiction of each organ, so far as it may be possible, has to be earmarked and demarcated. We have under our Constitution now agreed to the fundamental basis of a Federal structure. In 1935 too, when that Act was passed, a Federation consisting of provinces and States was envisaged. The powers of the Federation were defined and also those of the provinces or the States that were to form its component parts. As honourable Members are doubtless aware, three lists were prepared. List I dealt with Central subjects with regard to which the Centre had the power to legislate and to have its own agency and machinery for their execution. List II contained provincial subjects and provinces alone had the authority to pass the laws and to appoint suitable agency for their administration. Besides these two, there was a Concurrent List and it is with reference to that List that this amendment has been proposed. Now the Concurrent List was essentially concerned with provincial subjects, *i.e.* subjects which were considered to be appropriate for purposes of legislation as well as execution of these laws by the provinces themselves. But some exception was made in order to secure uniformity in the matter of legislation where such uniformity might be considered desirable. Under the scheme of that Act—and our Constitution is modelled on that Act for the most part,— the Centre has no executive authority with regard to Concurrent subjects. It could issue directives to provinces but it could not appoint its own agents in order to execute the laws that came within the purview of List III. That is why this amendment has been moved. Thus under the scheme of the 1935 Act so far as List III was concerned, the Centre had an overriding legislative authority but it had no executive authority beyond this that it could issue directives.

Now, the original clause of this Bill made a very wide provision. It intended to give power to the Centre to appoint its own agency for the execution of any or all the subjects mentioned in the Concurrent List. That is hardly possible and altogether improbable, because it is not conceivable that the Centre could administer all the subjects that are included in the Concurrent List, in all the Provinces of India. That is beyond the capacity of even the most resourceful and powerful Centre. It would have led to a great deal of confusion, if we had two parallel agencies and machineries in the provinces to deal with matters that came within the purview of the Concurrent List. The Concurrent List includes criminal law, it includes civil law, it includes arbitration. It includes also miscellaneous subjects such as boilers, engines and so on and so forth. Now, if we had parallel agencies appointed on the one hand by the Provinces and on the other by the Centre, for the execution of laws relating to these matters, then there would be confusion and chaos and no government would be able to function with efficiency. That is why under the original scheme of the 1935 Act, the duty of carrying out the laws relating to the subjects included in the Concurrent List was imposed exclusively on the provinces, because thus alone could orderly administration of those subjects be ensured. I personally feel and think, that that was a prudent arrangement. That was desirable. But all the same, the art of government is a practical one and adjustments have to be made from time to time; only whatever we do must conduce to greater efficiency, to greater economy, to greater public good and greater convenience. All these should be taken into account. So I would not altogether exclude the possibility of sometimes arrangements being made by the Centre for administering the subjects which at present might be included in the Concurrent List. So, so far as the general principle is concerned, I believe, the present Government of India accepts it, that concurrent subjects should ordinarily be administered by the Provinces. It is also, I think, accepted that no change should be made in the

present system of administration except with the consent and, if I may say so, the concurrence of the provinces. We on our part, are ever ready to place ourselves at the disposal of the Centre. In fact there is no occasion for any conflict now; and howsoever much one may feel that another course might perhaps be preferable, if the Centre takes a decision, one does not only reconcile oneself to it, but I for one would think that that is the only right decision, and I am, perhaps, in the wrong. That may be the case, even with respect to this particular clause. But now when we made the analysis of the provisions of this clause, we found that the reasons given for it in the Statement of Objects and Reasons only suggested the appointment of judges of appellate industrial courts in order to settle labour and industrial disputes. Honourable Members might have seen the amendments that I notified previously on the basis of that Statement of Objects and Reasons. I had suggested that in the circumstances, you might make a change in the lists, so as to meet the exigencies of the present situation. When I discussed the matter with the Honourable Home Minister, and the Honourable Minister for Industries and the Honourable Minister for Labour, we found that besides this one matter, there were two or three others also with regard to which they thought that it would be desirable to make some provision, although they had not been mentioned in the Statement of Objects and Reasons. So this amendment was recast. On the one hand, it upholds the principle that with regard to concurrent subjects, the executive authority would ordinarily vest in the provinces. On the other hand, it also accepts that there may be occasions when it may be necessary to make a departure, and it may be necessary for the Centre to step in and even to appoint its own agency and machinery. I do not yet know whether the Centre will actually do so. If I may submit with great humility, there are two sides to the shield, and some times, the Centre sees one and the provinces perhaps see the other. So one may look at one side of the shield and not attach any importance to the other side. But the advantages of one side may be more than out-balanced by the disadvantages of the other. So, unless we take a balanced view of the whole thing, it is difficult to say that the net advantage lies in any particular course that might suggest itself to any Honourable Minister who may be in charge of a particular subject. I do not suggest that in the case of the particular subjects that are mentioned in these amendments there may be such difficulties. But I do think that the basic principle should be adhered to. Otherwise it will lead to confusion. So the position with which some of us were confronted was this, that this Bill had contemplated an over-riding executive authority in the Centre with regard to concurrent subjects. Well, that as I said, seemed to me, to be against the basic principle of the Government of India as well as of the pivotal principle of a federal structure. So some way out had to be found. On the other hand there was the experience of the Honourable Ministers at the Centre who had found that their powers with regard to these particular subjects were not adequate enough to enable them to discharge their duties and obligations satisfactorily. So we hit upon this compromise, that with regard to these subjects, the powers should be conferred on the Centre. Now, that power does not by itself enable the Centre to appoint executive agents, but it gives them the option to bring such a measure in this House and if this House approves of it, then it will be open to them to appoint their own agents. I believe that it will still be simpler and easier if they were to appoint the Provincial Governments themselves as their agents for administering these subjects. We are there in the provinces to carry out their wishes which to use are no less than behests. Whatever communications we get from the Centre, we try our best to give effect to the directions and even to the hints contained in them and it will be our privilege to do so even in future. I hope, however, that things will be arranged in such a manner that there will be no occasion for any confusion. What I am afraid of is confusion in the matter of administration. In the field of administration

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there should be no overlapping so far as it can be avoided. The ambit of provincial autonomy has been clearly defined. All the spheres of provincial administration, whether legislative, executive or judicial, should remain untampered with, so that responsibility may be imposed on the provinces and their sense of responsibility may not be impaired. On the other hand, after all, as I said we have to be guided by practical considerations and no theories can be allowed to override the demands of the actual hard realities of the day.

So, while supporting this amendment, I express the hope that there will be no desire to impose any fresh executive on the provinces and that the utmost use will be made of the provinces even in the execution of laws that may be framed with regard to these subjects.

Mr. Vice-President : Does Sardar Patel wish to offer any remarks?

The Honourable Sardar Vallabhbhai J. Patel : No, Sir. These are agreed proposals.

Mr. Vice-President : Then I shall put the question.

The question is:

"That clause 2 as amended by amendment No. 9 and further modified by Amendment No. 4 do form part of the Bill."

I am sorry I find I have to put amendment No. 4 to vote first.

The question is:

"That in the new clause 2 proposed for substitution by amendment No. 9 of the list of amendments, for the words 'said Act' the words, figure and brackets 'Government of India Act, 1935 (hereinafter referred to as the said Act)' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is :

"That for clause 2, the following be substituted :

'2. *Amendment of section 8 of the Government of India Act,* 1935—

In section 8 of the said Act,—

(a) in the clause (i) of the proviso to sub-section (1), after the words 'in this Act' the words 'or in any law made by the Dominion Legislature with respect to any of the matters specified in the next succeeding sub-section' shall be inserted; and

(b) after sub-section (1), the following sub-section shall be inserted, namely:—

(1-A) The matters referred to in clause (i) of the proviso to sub-section (1) of this section are—

(a) industrial and labour disputes;

(b) trade and commerce in, and production, supply and distribution of, products of industries the development of which is declared by Dominion law to be expedient in the public interest;

(c) the sanctioning of cinematographic films for exhibition; and

(d) inquiries and statistics for the purpose of any of the matters in the Concurrent Legislative List.' "

The amendment was adopted.

Mr. Vice-President : I shall now put clause 2, as amended, to the vote of the House.

The question is:

"That clause 2, as amended, stand part of the Bill."

The motion was adopted.

Clause 2, as amended, was added to the Bill.

Mr. Vice-President : The House will now take up clause 3 for consideration.

Amendment No. 15 standing in the name of Shri Kuladhar Chaliha has the effect of a negative vote. It is therefore disallowed. The first alternative in amendment No. 16 standing in the name of Shri T. Prakasam also has the effect of a negative vote and is therefore disallowed. Shri Prakasam may move the second alternative in amendment No. 16. I understand that the mover does not want to move it. The next three amendments to this clause, Nos. 17, 18 and 19, I understand are also not moved.

I shall now put clause 3 to vote.

The question is:

"That clause 3 stand part of the Bill."

The motion was adopted.

Clause 3 was added to the Bill.

Mr. Vice-President : The House will take up clause 4 for consideration.

Amendment No. 20 standing in the name of Rai Bahadur Lala Raj Kanwar is disallowed as having the effect of a negative vote.

The next two amendments, Nos. 21 and 22, I understand, are not being moved.

I shall now put clause 4 to the vote of the House.

The question is:

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

Mr. Vice-President : Now we come to amendment No. 23 standing in the name of the Honourable Pandit Govind Ballabh Pant.

The Honourable Pandit Govind Ballabh Pant : Sir, I am just moving the amendment, but I will not take much time. I beg to move:

"That after clause 4, the following new clause be inserted:—

4-A. *Insertion of new section* 108-*A*.—Before section 109 in Chapter II of Part V of the said Act, the following section shall be inserted, namely:—

Previous sanction of Governor-General for certain legislative proposals.

108-A. No Bill or amendment providing for the exercise of the executive authority of the Dominion with respect to any of the matters specified in sub-section (1-A) of section 8 shall be introduced or moved in the Dominion Legislature except with the previous sanction of the Governor-General, and the Governor-General shall not give his sanction to the introduction of any such Bill or the moving of any such amendment unless he is satisfied that the views of the Governments of the Provinces and the Acceding States concerned have been ascertained.' "

Sir, I have only suggested in this amendment that before any Bill or any amendment is introduced in the House with regard to the matters mentioned in section 8 or in clause 2 which we have just passed, the provinces should be consulted, that there should be a certificate to that effect and that the papers relating to such correspondence should be placed on the table. I do not want to take the time of the House by any lengthy speech in support of this amendment. The substance of this amendment is, I believe, acceptable to the Honourable the Home Minister. So far as the form is concerned, I do not

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worry too much about it. So, if he will be pleased to accept in substance what this amendment proposes, I will be prepared to withdraw it in form. With these words I propose this amendment.

Mr. Vice-President : There is an amendment to this amendment.

Shri T. T. Krishnamachari : That is not being moved.

The Honourable Sardar Vallabhbhai J. Patel: I entirely agree with the Honourable Pandit Pant with regard to the substance of this amendment. I therefore give him an assurance that no Bill will be introduced in the Legislature at the Centre of the nature mentioned without giving a reasonable opportunity to the provinces for giving their opinion. Therefore it would be quite appropriate if he withdraws the amendment.

The Honourable Pandit Govind Ballabh Pant : With the leave of the House I withdraw the amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Now we come to clause 5. Amendment No. 24 is that the clause be deleted and it is therefore disallowed. Amendment No. 28 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : Sir, I beg to move:

"That in clause 5, at the end of the proposed section 126-A, the following be added ....."

Shri T. T. Krishnamachari : Mr. Vice-President, Sir, may I suggest that since the intention of the mover of the Bill is to ask for this clause to be withdrawn, this amendment is not necessary and need not be moved.

The Honourable Sardar Vallabhbhai J. Patel: We have accepted a change in clause 2 and so there is no point in keeping clause 5. I think it may be deleted.

Mr. Vice-President : The motion is:

"That clause 5 stand part of the Bill."

The motion was negatived.

Mr. Vice-President : Then we come to clause 6. Amendment No. 29 is disallowed as it has a negative effect.

Mr. Vice-President : Amendment No. 38 standing in the name of Mr. Naziruddin Ahmad. If you have no objection, we shall take it that the amendment has been read. You can make your remarks upon it.

Mr. Naziruddin Ahmad : Sir, I move:

"That in clause 6, in clause (a) of sub-section (1) of the proposed new section 290-A, the word 'or' occurring at the end, the whole of clause (b) of sub-section (1) and the proviso to sub-section (1) be deleted."

the words 'shall be administered', substituted.

or, alternatively,

That in clause 6, in clause (b) of sub-section (1) of the proposed new section 290-A, for the words 'shall be administered', the words "shall with their consent be administered" be substituted.

or, alternatively,

That in clause 6, in sub-section (1) of the proposed new section 290-A, for all the words beginning with 'the Governor-General may Order direct' to the end of clause (b) of the said sub-section, the following be substituted:—

'the Governor-General may by Order direct that the State or the group of State shall be administered in all respects as if the State or the group of States were—

(a) a Governor's or a Chief Commissioner's province, or

(b) with the consent of the State or State concerned, as part of a Governor's province.' "

I have to draw the attention of the House to clause 6 for the insertion of the proposed new section 290-A. With regard to clause (b) of sub-section (1) of Section 290-A, the part which I object to is that "the State or group of States shall be administered in all respects as if the State or the group of States formed part of a Governor's or a Chief Commissioner's province.....". The point which I would like to urge is that the States have entered into an agreement which is called the merger agreement. Under the terms of that agreement, this proposal to treat them as if they formed part of a Governor's or a Chief Commissioner's province would not be legal. Sir, I have to submit that if it is done, with the consent of the State or the States concerned, everything will be all right. So, the first part of my amendment is that the whole clause (b) be deleted. The next part of the amendment is in the alternative form that it may remain with the addition of the words "with the consent of the State or States concerned". The third alternative is the State is to be administered as an independent Governor's province or a Chief Commissioner's province or as a part of it only with their consent.

The reason which induced me to move these amendments is this: It appears that some States, compendiously described as Eastern States, entered into several agreements with the Central Government to the effect that the Ruler cedes to the Dominion Government "full and exclusive authority, jurisdiction and powers for the governance of the State and agrees to transfer the *administration* of the State to the Dominion Government" with effect from a certain date and the Dominion Government will be competent "to exercise such powers, authority and jurisdiction in such manner and through such agency as they may think fit". The effect of this agreement to my mind is that the State or the Ruler on behalf of this State in each case has ceded to the Government of India the management or the "administration" of the State. That power which has been ceded to the Government of India may be exercised directly or through an agency. What I object to is that this management or rather administration cannot be exercised so as to destroy or alter the identity or the integrity of the State. What has happened is that these States, a large number of them, have been, by virtue of these agreements, actually amalgamated with the Province of Orissa. That, I submit, absolutely destroys their identity. Orissa is a Governor's Province under the Government of India Act. So far as these small States are concerned, their Constitutions are rather obscure, but they are totally dissimilar to the constitution of the Province to which they are to be amalgamated. I submit that while entrusting the governance or rather the administration of the States to the Government of India to be carried on directly or through agency, no power has been given to convert these States into a part of a Governor's province. They could be managed fully and with full authority by the Province of Orissa but without in the least affecting their integrity or character and cannot be merged as part of Orissa. That is the point which I wish to submit before the House. *(Interruption).*

With regard to the interjection of my honourable Friend, Mr. Ananthasayanam Ayyangar, he has pointed out that it is not actually merging the State in the Governor's province but that is to be treated only "as if" it is part of a Governor's province. I fail to see any real or practical distinction or difference between the two, though there is some verbal difference. In fact, these States are to be treated just like the province, and in effect these States are to be completely merged, or rather sub-merged, in the province. The words "as if" do not at all relieve the situation. To emphasise them would be to shut our eyes to reality—they are, in fact, already actually a part of Orissa.

The House will be pleased to consider the well known legal position. In fact, when the British left, these States did attain some kind of independence or sovereignty. This was conceded by the Honourable Dr. Ambedkar during the debate on the consideration of the Draft Constitution. Some honourable Members had suggested that these States had no sovereignty, but on a proper

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consideration, the Honourable Doctor, presumably on behalf of the Government of India and in full concurrence with the Government, cleared the position, namely, that they have some kind of sovereignty. Call it a modified kind of sovereignty or inferior kind of sovereignty, but some kind of sovereignty they enjoyed.

With regard to this, there is a section in the Government of India Act, as adapted, enabling these States to accede and it may be by different documents. The accession, however, is strictly limited to the terms of the accession. That is absolutely clear from the Government of India Act, Section 6, Sub-section (2). In fact, the powers ceded or subjects acceded to must be clearly specified. In these circumstances, the question really will depend upon the construction you put upon the documents. One is the instrument of accession and the second is dated the 14th or the 15th of December 1947. There were a number of similar documents executed by many Rulers of States on or about these dates. these two documents are crucial and their terms would be extremely important and the question will depend upon what powers and jurisdiction and authority have been really conceded to the Government of India—keeping in view only one point, namely, the power to merge the State in a Governor's province as part thereof. Whether this power has been clearly, specifically or by necessary implication really granted is the only point. In interpreting the second document, which is really material, namely, the document dated the 14th or 15th of December, I find there are certain difficulties and I wish frankly to state them before the House both for and against the interpretation which I am seeking to introduce. In the preamble to this document, there is the expression—

"Whereas in the immediate interest of the State and the people the ruler is desirous that the administration should be integrated as early as possible with the province of Orissa....."

In fact, the Preamble clearly states a desire that the States concerned should be integrated with the Province of Orissa.

Mr. Vice-President : Though I do really admit that I have very little knowledge of these matters, it does seem to me as though you are talking in a general way. You ought to talk about your own amendment. This is not general discussion. These things would have been more appropriate in the general discussion.

Mr. Naziruddin Ahmad : I bow to your ruling but this, as I am going to point out, is directly concerned with the point.

Mr. Vice-President : I am afraid I do not agree with you. I must ask you to speak on the amendment.

Mr. Naziruddin Ahmad : These are the matters in the amendment. I am stating before the House the difficulty which lies against my contention. I must fairly state that also.

Mr. Vice-President : Quite so. You have your conviction, but the House has its opinion also, and probably the conviction of 299 members is much more important than the conviction of a single Member.

Mr. Naziruddin Ahmad : Of course so, but every Member has the right to speak.

Mr. Vice-President : You are not to argue but to follow my suggestion.

Mr. Naziruddin Ahmad : What is your suggestion?

Mr. Vice-President : That you speak on your amendment.

Mr. Naziruddin Ahmad : I submit, Sir, that I was speaking on my amendment.

Mr. Vice-President : Directly then, not in a round-about manner.

Mr. Naziruddin Ahmad : I am not round-about.

Mr. Vice-President : I am afraid you are arguing.

My opinion holds good here.

Mr. Naziruddin Ahmad : Of course, Sir. The difficulty is that the subject is a very intricate one. I submit that this desire for integration which is clearly against me appears only in the Preamble and not in the body of the agreement which is really the operative part, and it is a well known rule of interpretation that any wish or opinion or desire inserted in the Preamble is not effective and has no weight unless the same finds a place in the body of the document also. This rule is well established. I submit that in the body of article 1, which is really directly in point, it is said "full and exclusive authority and jurisdiction and powers" but only in relation to the governance or the *administration* of the State. The State only agrees for the above reasons that the *administration* should be transferred. There are two important points in this connection. One is that the agreement relates to the governance of the State and transfers the "administration". It does not transfer sovereignty, what remains of that sovereignty at the time of execution of the instrument of accession. Whatever is left as the remainder out of the rights that were carved out of that sovereignty, that remains. There is no mention of 'integration' in the body of the document. Only the right of administration has been transferred. I submit that in administering any property which is left to your care, you cannot alter its character. Supposing for instance any one is asked to administer a certain business, say a business in sugar. You ask a managing agent, or a Receiver or an Administrator to administer it. The managing agent or the Administrator has a quinine business. He converts the sugar business into a quinine business. Instead of producing something sweet, he produces some thing bitter. I submit, Sir, that you are going to do the same thing here. You are asked to administer a State with distinct and distinctive laws, rules, forms of constitution, forms of government. You want now to change them and convert it into a part of a Governor's province with different rules and constitution. It is not merely a physical combination between the two but a complete merger and a metamorphosis as a result of which the State loses its distinctive character and identity altogether. Suppose a man in difficulty left his wife to the care of a friend; the friend transfers the wife to some other friend, converting her as the latter's own wife. This is what is going to be done.

Mr. Vice-President : A not very happy illustration !

Mr. Naziruddin Ahmad : The power to administer is a power to manage. In managing or administrating a thing you cannot convert it to something else. That is the simple position. The Honourable Dr. Patel referred to certain legal opinion having been obtained for the States. There are opinions, not of in significant lawyers like me, but some very weighty opinions like those of Sir T. B. Sapru and others which are against the legality of the merger. They are clearly of opinion—I think the opinion has been circulated to the Government of India also that it is illegal.

The Honourable Sardar Vallabhbhai J. Patel : This Department keeps away from outside legal opinion.

Mr. Naziruddin Ahmad : Quite so, the question should be considered, independently of any outside opinion, on its merits by the House. I submit that there is a body of weighty opinion, and the matter should be carefully considered. In these circumstances I submit that item (b) of sub-clause (1) really goes against the provision in the Agreement. I submit the Agreement should be carefully considered. I find there is nothing in the agreement which justifies the conversion, of a State of one kind to one completely of a different kind. This in short is the simple proposition which I submit. I must make it absolutely clear

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that in doing so I am actuated only by the desire to regularise things. If there is anything irregular or if there is any lacuna, I think the Rulers should be asked in their own interests to execute another document just to transfer this right so as to treat their States as part of a Governor's province. Suppose at some future date.....

Mr. Vice-President : I have already given twenty minutes to the honourable Member.

Mr. Naziruddin Ahmad : Is it your desire that I should stop?

Mr. Vice-President : Yes.

Mr. Naziruddin Ahmad : Thank you, Sir.

Shri T. T. Krishnamachari : Sir, I move:

"That in clause 6, in sub-section (3) of the proposed new section 290-A, after the words 'give such' the word 'supplemental' be inserted."

It is more or less a formal amendment. The words mentioned in the clause are 'incidental' and 'consequential'. 'Supplemental' is also necessary.

The Honourable Sardar Vallabhai J. Patel : I accept it.

Mr. Vice-President : Amendment No. 64 to be moved by Shri Himatsingka.

Shri Prabhudayal Himatsingka (West Bengal : General): Sir, I move:

"That in clause 6, in the proposed new section 290-B, for the words 'by the Government of' the words 'in all respects by' be substituted."

Section 290-A makes provision for the administration of certain acceding States which are being tacked on to the Chief Commissioner's provinces or Governor's provinces. This is the contrary case where any part of the area included in a Chief Commissioner's province is to be tacked on to some acceding State. I am therefore suggesting that it shall be administered in all respects, so that there may be no doubt as to the authority of the state to which it is tacked on, to administer in all respects, executive and legislative authority and other authorities. This will be on par with the previous provision.

The Honourable Sardar Vallabhbhai J. Patel : I accept it.

Shri T. T. Krishnamachari : Sir, I move:

"That in clause 6, in sub-section (2) of the proposed new section 290-B, after the words 'contain such' the word 'supplemental' be inserted."

This is similar to the previous amendment, moved by me and I hope the House will accept it.

Mr. Vice-President : Clause 6 is now open for general discussion. I shall call upon the States' people because they are the people who are principally concerned. Mr. Gopikrishna Vijayavargiya. I am sorry I cannot give you too much time.

Shri Gopikrishna Vijayavargiya [United States of Gwalior-Indore-Malwa (Madhya-Bharat)] : Mr. Vice-President, Sir, I am not taking much of the time of the House and particularly I have to reply to the amendment moved here by Mr. Naziruddin Ahmad. I come from a State and I say it is not the rulers but it is the States' people who are most concerned in this affair. It is not a legal question really, although law is required everywhere, but it is a political question. We do not want to divide this country into so many pieces and so many principalities and, therefore, it has been a consistent demand of the people of the States that the several States must go and we should form one India, and so whatever the States Ministry has done and

whatever agreements have been entered into, they are in the interests of the people. After all, the people of the so-called British Indian Provinces and the States are all one, and therefore whatever has been done is in the interests of the country. I must say, Sir, that the words 'as if' are quite sufficient from the legal view point and it maintains whatever little distinction is necessary. I rather wish that these states should be completely obliterated from the face of India and not even this distinction should be maintained, and therefore, I will say that all these legal objections to this section must go and we must pass this section as it is here.

Shri Ratan Lal Malaviya (C. P. & Berar : States): *[Mr. Vice-President, Sir, I rise to support Honourable Sardar Patel's Bill seeking to amend the Government of India Act, 1935, and specially clause 6. The truth is that the Chhattisgarh States had an earnest desire that all of them should be merged in order that they may share in the progress being made by the provinces and also to make their own contribution to the progress of the country as a whole. When, on 14th December 1947, Honourable Sardar Patel reached Kattak, the representative of the Chhattisgarh States submitted to him a memorandum requesting for an early merger of the States on the lines followed in merging certain states in Orissa. I am glad that the Chhattisgarh States have been merged in C. P. On the 1st January, every where in the States, the merger celebrations were held and there was rejoicing among the people, After 1st January, *i.e.,* after the States were merged, the Provincial Government tried its best to bring about improvement in the States and took certain measures in quick succession for their development which gave us satisfaction that the merger had been beneficial to us. But the Provincial Government could not pull on well with the representatives of the States. There arose there from some trouble which still continues. The amendment Act, which is before the House should be passed so that the State representatives may have the right to advise the Provincial Government and the State administration may be conducted in the light of their advice. On the 1st January, *i.e.,* one month after the merger, an Advisory Board for the States in Orissa was formed and their representatives were also taken in the Executive Council. But the C. P. Government could not do the same. The representatives of the States in C. P. tried for the formation of such a board. If C. P. had formed an Advisory Council to secure the co-operation in the matter of the State administration and had taken on the board some state representatives, there would have been no discontent. It may be that there were difficulties owing to which the C. P. Government did not form such a board. But with the acceptance of this clause the difficulties, if any, would be removed.

Sir, in this connection I may inform you that since our representatives were not in any way associated with the Government of the Central Provinces, it happened that the reports submitted by State officials against our workers,—and I may add these were responsible workers,—were accepted by the Government in due course. Naturally this led to some trouble in the initial stages.

Besides, as our representatives were not associated with the administration, many excesses were committed in the realisation of the land revenue. When we approached the Prime Minister and the Government with our grievances, the officials felt annoyed with us and started cases against our workers, and I may add that a number of workers have recently been sentenced to imprisonment. Similarly, rates in respect of forest were considerably enhanced which caused considerable discontent in the States. The facilities which the States previously enjoyed were also curtailed and this too created resentment. If the Provincial Government had cared to secure our co-operation, as would be obligatory in future by virtue of this clause, the difficulties which we are

* [ ] Translation of Hindustani speech.

[Shri Ratan Lal Malaviya]

facing today and the conditions that have been created would not at all have been there.

With the passage of this clause, the representative of the people would be able to render some services to the people and the people would have an opportunity of conveying their wishes to the Government. With these words, Sir, I commend clause 6 of the Bill and express my gratitude to Honourable Sardar Patel for bringing it forward.]

Mr. Vice-President : Sardar Patel, do you wish to say anything?

The Honourable Sardar Vallabhbhai J. Patel: I have nothing to say.

Mr. Vice-President : I shall now put the amendments one by one to vote.

Amendment No. 38 standing in the name of Mr. Naziruddin Ahmad:

The question is:

"That in clause 6, in clause (a) of sub-section (1) of the proposed new section 290-A, the word 'or' occurring at the end, the whole of clause (b) of sub-section (1) and the proviso to sub-section (1) be deleted."

or, alternatively,

That in clause 6, in clause (b) of sub-section (1) of the proposed new section 290-A; for the words 'shall be administered', the words "shall with their consent be administered" be substituted.

or, alternatively,

That in clause 6, in sub-section (1) of the proposed new section 290-A; for all the words beginning with 'the Governor General may by Order direct' to the end of clause(b) of the said sub-section, the following be substituted:—

'the Governor-General may by Order direct that the State or the group of States shall be administered in all respects as if the State or the group of States were—

(a) a Governor's or a Chief Commissioner's province, or

(b) with the consent of the State or States concerned, as part of a Governor's province.' "

The amendment was negatived.

Mr. Vice-President : Amendment No. 56 standing in the name of Mr. T. T. Krishnamachari.

The question is:

"That in clause 6, in sub-section (3) of the proposed new section 290-A, after the words 'give such' the word 'supplemental' be inserted."

The amendment was adopted.

Mr. Vice-President : Amendment no. 64 moved by Mr. Prabhudayal Himatsingka.

The question is:

"That in clause 6, in the proposed new section 290-B, for the words 'by the Government of' the words 'in all respects by' be substituted."

The amendment was adopted.

Mr. Vice-President : Amendment No. 75 standing in the name of Mr. T. T. Krishnamachari.

The question is:

"That in clause 6, in sub-section (2) of the proposed new section 290-B, after the words 'contain such' the word 'supplemental' be inserted."

The amendment was adopted.

Mr. Vice-President : The question is :

"That clause 6, as amended, stand part of the Bill."

The motion was adopted.

Clause 6, as amended, was added to the Bill.

Mr. Vice-President : We take up clause 7. Amendment No. 80 standing in the name of Mr. T. T. Krishnamachari.

Shri T. T. Krishnamachari : Mr. Vice-President, Sir, I move :

"That in sub-clause (a) of clause 7, in the proposed paragraph 34 of the Federal Legislative List, the words 'trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries' be deleted."

Sir, the reason for this amendment primarily was different; but now, in view of the fact that article 2 has undergone a change and also in view of the fact that my honourable Friend Mr. Govind Vallabh Pant is going to move amendments numbers 87 and 88, this will be necessary in order to clarify the position, because the words that are now sought to be omitted are being put in List III of Schedule 7, by the amendments Nos. 87 and 88. I hope the House will accept this amendment.

The Honourable Pandit Govind Ballabh Pant : With your permission, Sir, I should like to move....

Mr. Vice-President : All the three amendments?

The Honourable Pandit Govind Ballabh Pant : Yes, Sir: amendments 84, 87 and 88. I move:

"That in sub-clause (b) of clause 7, in the proposed paragraph 27 of the Provincial Legislative List, for the words '34 of List I' the words `31 (A) of List III' be substituted."

"That in sub-clause (c) of clause 7, in the proposed paragraph 29 of the Provincial Legislative List, for the words and figures '34 of List I', the words and figures '31-A of List III' be substituted."

"That in clause 7, the following new sub-clause be inserted at the end:—

'(d) after paragraph 31 of the Concurrent Legislative list the following paragraph shall be inserted as paragraph 31(A) :—

31(A). Trade and commerce in, and production, supply and distribution of, products of industries, the development of which is declared by Dominion law to be expedient in the public interest under paragraph 34 of List I.' "

Sir, all the four amendments Nos. 80, 84, 87 and 88 are inter-connected and inter-linked and they must stand or fall together. According to the Bill, development of industries where development under Dominion control is declared by Dominion law to be expedient in the public interest, regulation and control of such industries, trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries, were to be included in List I. That is, all these subjects were to be brought within the exclusive jurisdiction of the Federal Legislature and the Federal Government. Now, that would have led to several other difficulties and complications. We all realise that so far as development of industries, where development under Dominion control is declared by Dominion law to be expedient in the public interest and regulation and control of such industries should vest in the Centre. According to the entry already contained in the Federal Legislative List, development of industries where development under Dominion control is declared by Dominion law to be expedient in the public interest, is already included and there is no intention of making any

[The Honourable Pandit Govind Ballabh Pant]

change so far as that is concerned. But, as proposed in this amendment regulation and control of such industries should also be placed under the jurisdiction of the Federal Legislature. So, so far as the first two parts of this clause are concerned, they will stand as they are. But with respect to the rest, that is, trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries, it is proposed by the series of amendments to which I referred at the outset, that these should be included in the Concurrent List and consequential changes should be made in the other amendments. So, the main point that is before the House is whether trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries should or should not be transferred from this class to List III, that is, instead of being included in List I they should form part of List III.

I think honourable Members will agree that the amendments that I am proposing will serve the purpose which the original clause had in view fully and will at the same time avoid other difficulties and complications which might arise if these items were not included in the Concurrent List. For, by including these in the Concurrent List, the power is vested in the Centre to legislate with regard to these matters. Power is also vested by virtue of clause 2, which has already been amended, to appoint agents directly for the administration of any of these subjects so that the Centre can have plenary, comprehensive and if it so chooses even exclusive control with regard to these matters. But, whatever the Centre may do, I venture to submit that it will still be necessary for the provinces to exercise a number of functions within their own provincial boundaries with regard to these matters. So, if these are made the exclusive charge of the Centre, then, the provinces will not be free to discharge the duties and obligations which will necessarily devolve on them. In order to enable the provinces to play their part subject to the over-riding powers that will now vest in the Centre, it is necessary to include these items in the Concurrent List and that is what I propose. Even now when we have got the Essential Supplies Act, the Centre generally frames a few basic rules and leaves the rest to the provinces. We in the provinces have been issuing orders rules and regulations with regard to these matters in our respective provinces. Whatever be the position hereafter, it will still be necessary for the provinces to exercise these powers. In our own province for example, we propose to introduce a bill so that the distribution of building materials may be regulated, that no steel or iron or coal etc. be supplied for the purpose of any building which is likely to cost more than Rs. 25,000. That is under our consideration. Now unless these items are included in the Concurrent List, we have no power to introduce such a bill in our Legislature. Besides, as I said, if these items are placed in List I, the Centre will not find it possible to administer these subjects in an efficient way. They require a very extensive network and I think it is not possible for the Centre to manage these things without the active co-operation and support of the provinces. So I propose that the amendments to which I referred at the outset be accepted unanimously by the House.

Mr. Vice-President : There are two amendments which have to be considered further. The one is No. 9 in the name of Mr. Naziruddin Ahmad which is disallowed as verbal.

Mr. Naziruddin Ahmad : It should be considered by the Draftsmen.

Mr. Vice-President : I suppose it will be. Is it necessary to hold a general discussion on this clause?

Honourable Members : No.

Mr. Vice-President : Then I shall put the amendments to vote one after another.

The question is:

"That in sub-clause (a) of clause 7, in the proposed paragraph 34 of the Federal Legislative List, the words 'trade and commerce (whether or not within a province) in, and production, supply and distribution of, products of such industries' be deleted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in sub-clause (b) of clause 7, in the proposed paragraph 27 of the Provincial Legislative List, for the words '34 of List I', the words '31-A of List III' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in sub-clause (c) of clause 7, in the proposed paragraph 29 of the Provincial Legislative List, for the words and figures '34 of List I', the words and figures '31-A of List III' be substituted."

The amendment was adopted.

Mr. Vice-President : The question is:

"That in clause 7, the following new sub-clause be inserted at the end:—

'(d) after paragraph 31 of the Concurrent Legislative List the following paragraph shall be inserted as paragraph 31(A):—

31(A). Trade and commerce in, and production, supply and distribution of, products of industries, the development of which is declared by Dominion law to be expedient in the public interest under paragraph 34 of List I.' "

The amendment was adopted.

Mr. Vice-President : The motion is:

"That clause 7, as amended, stand part of the Bill."

The motion was adopted.

Clause 7, as amended, was added to the Bill.

Mr. Vice-President : The question is:

"That clause 1 and the Long Title form part of the Bill."

There is an amendment to this.

Shri. T. T. Krishnamachari : Mr. Vice-President, I move:

"That for clause 1 the following clause be substituted:—

Short title and Commencement. 1. (1) This Act may be called the Government of India (Amendment) Act, 1949.

(2) It shall come into force on the 15th day of January, 1949."

Sir, the first sub-clause is necessary because the date has to altered and the second one precisely states when the Act will come into force.

Sir, I move.

Mr. Vice-President : I now put the amendment to vote. The question is:

"That for clause 1 the following clause be substituted:—

Short title and Commencement. 1. (1) This Act may be called the Government of India (Amendment) Act, 1949.

(2) It shall come into force on the 15th day of January, 1949."

The amendment was adopted.

Mr. Vice-President : The motion is:

"That clause 1, as amended, stand part of the Bill."

The motion was adopted.

Clause 1, as amended, was added to the Bill.

Mr. Vice-President : The question is:

"That the Long Title and the Preamble stand part of the Bill."

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel : Sir, I move:

"That the clauses 1(A), 2, 3 and 4 be renumbered as clauses 2, 3, 4 and 5 respectively."

Mr. Vice-President : The question is:

"That the clauses 1(A), 2, 3 and 4 be renumbered as clauses 2, 3, 4 and 5 respectively."

The motion was adopted.

The Honourable Sardar Vallabhbhai J. Patel : Sir, I move:

"That the Bill, as amended, be passed."

Mr. Vice-President : The question is:

"The Bill, as amended, be passed."

The motion was adopted.

Mr. Vice-President : The House stands adjourned till ten tomorrow.

The Assembly then adjourned till Ten of the Clock on Thursday, the 6th January 1949.

CONSTITUENT ASSEMBLY OF INDIA

Thursday, the 6*th January* 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

DRAFT CONSTITUTION—*(Contd.)*

New Article 147-A

Mr. Vice-President (Dr. H. C. Mookherjee): We shall take up discussion of article 148. But I am informed that article 147-A comes under the same chapter and so with the permission of the House we can take up article 147-A.

The motion before the House is:

"That article 147-A form part of the Constitution."

This is in the name of Prof. K. T. Shah.

Prof. K.T. Shah (Bihar : General): Mr. Vice-President, Sir.....

Mr. Vice-President : I understand that a similar amendment in the case of the Centre was rejected by the House.

Prof. K. T. Shah : Yes, Sir. But I may point out respectfully that in that case the proposal was to separate all powers; but here it is only the legislature that is sought to be separated.

Mr. Vice-President : All right; you may move your amendment.

Prof. K. T. Shah : Sir, I move:

"That before article 148, the following new article 147-A be added:—

'The Legislature of every State shall be wholly separate from and independent of the Executive or the Judiciary in the State'."

Sir, while it is no doubt part of my thought on this subject that the powers of the organized government, in a State calling itself federal and democratic, should be separate, one from the other, I have deliberately worded my amendment in such a way that even though the other structure may remain what it is, the local legislature may be separate from the executive and the judiciary. The separation of the two is intended to secure the independence of the legislature and also freedom from any influence of the legislature over the judiciary. I would rather emphasise on this occasion and in this connection the separation of the judiciary, the independence of the judiciary, than of the legislature, as such. When we consider the judiciary, I would place similar amendments with definite reference to the judiciary. In this case, I would like to point out that whereas the law-making body makes laws after due consultation and contacts with the juristic advisers that they may have, or the technical draftsmen who may assist them, nevertheless, they should not have any contact with the judiciary as such, lest the knowledge of what took place in the legislature, the knowledge of the debates, discussions, promises or assurances given, or even *obter-dicta* that may be thrown out on the floor of the Legislature by either side, may influence judgment. It is an accepted principle—and I think quite

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a right one—that the judiciary in their interpretation of a written Constitution should not be influenced by anything that took place in the debates on a given piece of legislation. In a federal constitution, it is inevitable that questions may crop up time and again, not only of the interpretation of ordinary legislation, but also of the very constitutional aspect of a given legislation, or acts of the Executive under the Constitution. It is but right and proper that the legislature should be completely free from the influence or any chance of being influenced by the two other organs of the State. Further, the Judge themselves having pre-conceptions—so to say, of the nature or intention of the law—are likely to give an interpretation not necessarily in consonance with the true doctrine of interpretation, but rather, because of their pre-knowledge, so to say, of the intention, even if the meaning is not properly given in the wording as finally decided upon.

For these reasons, Sir, and for securing the purity, both of the Legislature and of the Judiciary, I commend this motion to the House, that the two should be completely separate.

Mr. Vice-President : Dr. Ambedkar will reply to the amendment.

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I oppose the amendment, and all that I need say is this, that the basic principle of the amendment is so fundamentally opposed to the basic principles on which the Draft Constitution is based, that I think it is almost impossible, now to accept any such proposal.

Mr. Vice-President : I am now going to put the amendment to vote.

The question is:

"That before article 148, the following new article 147-A be added :—

'The Legislature of every State shall be wholly separate from and independent of the Executive or the Judiciary in the State'."

The amendment was negatived.

Article 148

Mr. Vice-President : Now we come to article 148.

The motion before the House is:

"That article 148 form part of the Constitution."

Amendments Nos. 2222, 2223, 2224, and 2225, and amendment No. 2227 are of similar import No. 2225 standing in the name of Prof. Shibban Lal Saksena may be moved.

(Amendments Nos. 2222 and 2225 were not moved.)

Amendment No. 2223 and No. 2224 may be moved; both are in the name of Shri Brajeshwar Prasad.

Shri Brajeshwar Prasad (Bihar : General): I am not moving them.

Mr. Vice-President : Then No. 2227, standing in the name of Shri Nand Lal may be moved.

Master Nand Lal (East Punjab : General): I am not moving it.

Mr. Vice-President : Then, in List II of Sixth Week, there is an amendment to amendment No. 2222. As it is not moved, Prof. Shah may move amendment No. 2226.

Prof. K. T. Shah : Mr. Vice-President, Sir, I beg to move—

"That for the existing clause (1) of article 148, the following substituted:—

'(1) For every State there shall be a Legislature which shall consist of such number of Houses, not exceeding two, as Parliament shall determine by law in each case; provided that it shall be open to the Legislature of any State to request the Parliament of the Union to change a bicameral into unicameral Legislature, and such request being duly made and received, Parliament shall pass the necessary legislation'."

Sir, the original clause as it stands reads:

"For every State there shall be a Legislature which shall consist of the Governor; and

(a) in the States of ....., two Houses,

(b) in other States, one House."

I wish to put the States on a part and suggest that the Legislature of every State should be eventually determined by an Act of Parliament, and subsequently altered, if so desired, at the request of the State concerned.

Sir, I do not believe in a bicameral Legislature at least for the States. I think a Second Chamber is not only not representative of the people as such; but even if and where it is representative of the people, even if and where it has been made in such a way as to represent some aspect of the country other than the pure popular vote, even then it is there more as a dilatory engine rather than a help in reflecting popular opinion on crucial questions of legislation.

Apart from the classic example of the House of Lords, which is a hereditary reactionary and non-elected body, even where the Second Chambers are elected, they deflect the legislative machinery, for one thing; they involve considerable outlay from the public exchequer on account of the salaries and allowances of Members and incidental charges. They only aid party bosses to distribute more patronage, and only help in obstructing or delaying the necessary legislation which the people have given their votes for.

Those who like to defend the Second Chamber are, more often than not, champions of vested interests, which find a place in these bodies and as such find an occasion rather to defend their own special, sectarian or class interests than to help the popular cause.

On the question of Second Chambers, therefore, Sir, I think it is a clear division of political opinion, whether or not it is the will of the people alone which should prevail or some separate interest or special interest be also allowed a say. [It must also be admitted that in the course of centuries in the course of history, wherever there have been two chambers, means have been devised to make the popular will eventually prevail. The only result of the Second Chamber, therefore, is that wherever democracy is in working order as an effective machinery of Government the only use of the Second Chamber is to delay, or to obstruct legislation rather than to make it utterly impossible for the popular will eventually to prevail.]

In England, in America and elsewhere, the Second Chamber is ultimately made ineffective. If that is the experience of the world, I do not see why that experience should be neglected and in the States we should repeat a machinery of legislation which is bound to be only expensive and dilatory rather than useful.

The case of the Centre is different. It is so because the interests to be represented are more particularly those of the Units than of the country which is represented in the Lower House. Though a Second Chamber may therefore quite properly be provided for the Central Legislature, the arguments that may be advanced in defence of such arrangements at the Centre would not apply in my opinion to the Units. Accordingly I suggest that the place of the

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Second Chamber may be left entirely to the Units themselves. In the first instance Parliament may determine according to the size, the population, the area and perhaps also the presence of special interests, if any, and lay down a legislative composition as in its judgment the Central Parliament thinks proper. But eventually the Unit itself and the Legislature of the Unit must have the right to say what is most suited for its requirements; and if such a request is made it should be entitled to demand a revision of the original Act as a matter of course and provide for whatever single chamber form of legislation it desires, is necessary and proper for its case.

I have therefore suggested in my amendment that though in the first instance Parliament may lay down for each particular State a form of legislature that it thinks is suitable for given areas, in the ultimate analysis the people in the Units must be able to say whether they want a Second Chamber in their case. This is not therefore summarily a rejection of the Second Chamber here and now. This is not to say that by Constitution we shall make it impossible for local opinion to prevail in the matter. All that I am asking is that in the event of the people of any Unit so desiring, they should be at liberty and entitled to demand of the Central Parliament that, in their case at any rate, a Second Chamber is needless and therefore should be done away with, whereas for others there may be a Second Chamber if the people of that unit so desire. I therefore recommend the motion to the House.

Mr. Vice-President : The next amendments Nos. 2228 and 2229 standing in the name of Mr. Naziruddin Ahmad are disallowed as being merely verbal.

Mr. L. N. Sahu may move amendment No. 2230.

Shri Lakshmi Narayan Sahu (Orissa : General): *[Mr. Vice-President, the amendment that I am moving before the House is:

"That in sub-clause (a) of clause (1) of article 148 after the words 'States of' the word 'Orissa' be inserted."

It implies that Orissa should have two Houses instead of one and that one of these two should be the Upper Chamber. My Friend Shri K. T. Shah observed a little while ago that a Second Chamber is not very essential and that it may only be constituted where the popular will demands it. There does not appear to be anything objectionable in this proposition. But the constitution, as now being framed, makes provision for a Second Chamber. What I demand is that this provision should continue for the future as well. Second Chambers are functioning even now in Assam, Madras and Bihar. It was not felt necessary to have Second Chambers for the other provinces. I think that a Second Chamber is not needed in Assam at present. But in my opinion it would not be proper for us to decide that a Second Chamber is not necessary for Orissa merely on the ground that the Members from Orissa do not desire to have one. My submission is that there should be at least this provision, that there can be a Second Chamber if it is demanded by the will of the people. It would then be possible for us to decide whether we need a Second Chamber or not. We have adopted the American Constitution as a model in drafting our Constitution. Under the American Constitution, however, bicameral legislatures exist in all the States. Besides, we want a bicameral legislature at the Centre in order that Provinces may be represented therein. Recently twenty-five States have been merged in Orissa. So far they were separate from Orissa. Recently they have been merged in Orissa. A Second Chamber, therefore, is very necessary there.

An objection raised by a few people is that dilatory tactics are adopted in the Second Chamber and therefore it is unnecessary. As for dilatory tactics, they

* [ ] Translation of Hindustani Speech.

can be adopted even where there is only a single Chamber. For instance the Hindu Code Bill is under consideration for the last four or five years. Many people fear that if a Second Chamber is constituted well-to-do-persons and big capitalists would be able to secure its membership quite easily. But this is what I would like to happen. Now that our country is free and until we establish a socialist State here, we should give every opportunity to men of outstanding ability and wealth to take their due share in the governance of the country. There is absolutely no justification for denying them this share. I may add that there cannot be any harm done if a few rich men are able easily to secure election to the Second Chamber. Besides, we exclude one important fact from our consideration when we criticize the proposal for a Second Chamber. It is that most probably elections are not going to be on the basis of proportional representation in the Provinces. It is, therefore, quite probable that minorities would fail to secure their due representation in the legislatures. Political parties are not yet properly formed in our country. So long as parties are not properly organised, it is possible for people of all shades of opinion to secure election only through the system of proportional representation. But there being no proportional representation, a Second Chamber appears to be essential, till parties come to be organised on a proper basis, for, then those Sections which fail to get representation in the Lower House would have a chance of getting representation in the Second Chamber.

We see that many people do not very much like a Second Chamber. But as I said a little before, Orissa has been newly formed. Twenty-five States have been merged in it recently. Therefore a Second Chamber should certainly be provided for Orissa. Besides, changes are taking place fast in our country as in the world. The creeds of Socialism, Communism and so many other isms are appearing, and are making big advances. In order to delay these changes to ponder over them and to control them, it is absolutely necessary to have a Second Chamber. Prof. Shah observed that the House of Lords in England is tradition-ridden. But this need not frighten us, for the Second Chamber we are going to constitute would not be of the type of the House of Lords. It will be altogether of a different kind. I may add that even the English people feel the necessity of a Second Chamber, for even there is a move to make it strong and effective. Further, ours is not a unitary type of government. It is federal, even though many powers of the Units have been taken over by the Central Government. I, therefore, submit that two Houses are absolutely necessary, for there is very great need of careful thought being given to all the problems that may arise. I may add that when the Centre would be so very powerful it is necessary that there should be two Chambers in the provinces. In any case a second Chamber must be provided for Orissa in the new Constitution that we are framing. I would like to add that this question of a Second Chamber may be left over to be decided by the will of the people of Orissa, and till the people take a decision in the matter we should take no decision but keep this question open.]

Shri L. Krishnaswami Bharathi (Madras : General): Sir, I move:

"That in sub-clause (a) of clause (1) of article 148, after the words 'in the States of' the word 'Madras' be inserted."

Honourable Members will see that article 148(1) reads :

"For every State there shall be a Legislature which shall consist of the Governor; and
(a) in the States of ....."

(here there is a blank to be filled in later on.)

My amendment, if accepted, will fill up the blank to some extent, in the States of Madras : that is to say, in the States of Madras there shall be two Houses—one the Legislative Assembly and the other the Legislative Council.

[Shri L. Krishnaswami Bharathi]

Sir, it was understood that Members representing the different provinces should meet together and come to a decision as to whether they would like to have a Second Chamber for their province. Accordingly, Members belonging to the different provinces met separately, and the representatives of Madras also met similarly under the presidency of Rashtrapati Dr. Pattabhi Sitaramayya, and after sufficient discussion it was decided that Madras shall have two Chambers. Recently this decision was come to, but last year.....

Shri Mahavir Tyagi (United Provinces : General): On a point of order, may I know if it is necessary that honourable Members from all the provinces that have decided to have two Chambers should come here and move separate amendments for their provinces: Cannot the decisions reached by those Members be included in one full list?

Mr. Vice-President : If the honourable Member will have patience for a few minutes longer, he will find the answer to this query given by the Chairman of the Drafting Committee.

Shri L. Krishnaswami Bharathi : I was saying that the Members representing Madras met together and decided sometime last year, when a similar decision was come to, and to regularise it we met recently and decided accordingly.

There is some opposition to this idea of a Second Chamber. I am inclined to think that it is born more out of prejudice of the present Second Chambers and the general view is, and I also agree with that view, that the idea of a second Chamber is to prevent or check hasty legislation. Experience has shown that so far as the proceedings of this Assembly are concerned, last year we decided many matters. In similar matters we have come to decisions and it was only submitted to the Drafting Committee to put them in order. But we find that we are revising many articles: even article 150, where we fixed a limit is undergoing constant changes. That shows that there is always need for some time to elapse.

In this connection, I might invite the attention of the House to an interesting incident reported in the life of George Washington. It appears that Thomas Jefferson was protesting very strongly against the idea of a Second Chamber, to Washington. Mr. Farrand reports this incident very interestingly: they were taking coffee at breakfast time. Suddenly George Washington asked: "Why, Mr. Jefferson, why are you pouring the coffee into your saucer?" Jefferson replied: "To cool it" Even so, we want to cool legislation by putting it into the saucer of the senatorial Chamber. That is a forceful way of expressing the idea and as we are going to be constituted, it is to check or prevent hasty legislation and not at all to impede progressive legislation. There shall be no mistake about it; the idea is not to check progressive legislation but to have some time so that cool, calm and deliberate conclusions may be arrived at.

Therefore, there is absolute need for a Second Chamber for some time, and as I understood Prof. K. T. Shah, I think he wanted that there must be some provision so that if we did not want a second Chamber later on, we must be able to do away with it, not necessarily by amending the Constitution, which is not an easy affair, but provision must be made in the Constitution itself. That is how I understood him.

If the Prof. turns to article 304, sub-clause (2), a provision therefore is therein made. That provision enables the Units or the Legislative Assemblies of the different States or Provinces, as the case may be, to initiate proceedings in a particular assembly with a view not to have the Second Chamber. That is a broad clause which enables a Provincial Legislative Assembly to

decide upon the number of Houses if they so desire. With your kind permission, I may be allowed to read that portion of article 304 (2)....

Shri S. Nagappa (Madras : General): Not necessary !

Shri L. Krishnaswami Bharathi : Why? It is not for Mr. Nagappa alone: I am reading it for the enlightenment of the House. I suppose, Sir, I have your permission. If Mr. Nagappa knows it, that does not mean that others need not be enlightened.

Article 304(2) reads:

"Notwithstanding anything in the last preceding clause, an amendment of the Constitution seeking to make any change in the provisions of this Constitution relating to the method of choosing a Governor or the number of Houses of the Legislature in any State for the time being specified in Part I of the First Schedule may be initiated by the introduction of a Bill for the purpose in the Legislative Assembly of the State or, where the State has a Legislative Council, in either House of the Legislature of the State, and when the Bill is passed by the Legislative Assembly or, where the State has a Legislative Council, by both Houses of the Legislature of the State, by a majority of the total membership of the Assembly or each House, as the case may be, it shall be submitted to Parliament for ratification, and when it is ratified by each House of Parliament by a majority of the total membership of that House it shall be presented to the President for assent and upon such assent being given to the Bill, the Constitution shall stand amended in accordance with the terms of the Bill."

So, provision has been made. As I was speaking, some honourable Members wanted to know whether there was a possibility of the Provincial Assembly scrapping it. I looked it up and I thought it my duty to invite the attention of the House to the provision made in this Constitution. I therefore hope that this amendment will be accepted.

Sir, I move:

Mr. Vice-President : There is an amendment to this amendment—No. 46 of List II, standing in the name of Dr. Ambedkar. Is the honourable Member going to move it?

The Honourable Dr. B. R. Ambedkar : Sir, I move:

"That for amendment No. 2231 of the List of Amendments, the following be substituted:—

> 'That in sub-clause (a) of clause (1) of article 148, after the words 'in the States of' the words 'Madras, Bombay, West Bengal, the United Provinces, Bihar and East Punjab' be inserted'."

Sir, I should like to state to the House that the question of whether to have a second Chamber in the provinces or not was discussed by the Provincial Constitution Committee, which was appointed by this House. The decision of that Committee was that this was a matter which should be left to the decision of each province concerned. If any particular province decided to have a second Chamber it should be allowed to have a Second Chamber: and if any particular province did not want a second Chamber, a second Chamber should not be imposed upon it. In order to carry out this recommendation of the Provincial Constitution Committee it was decided that the Members in the Constituent Assembly, representing the different provinces should meet and come to a decision on this issue. The Members of the different provinces represented in this Assembly therefore met in groups of their own to decide this question and as a result of the deliberations carried on by the Members it was reported to the office that the provinces which are mentioned in my amendment agree to have a Second Chamber for their provinces. The only provinces which decided not to have a second Chamber are the C. P. & Berar, Assam and Orissa. My amendment gives effect to the results of the deliberations of the representatives of the different provinces in accordance with the recommendation of the Provincial Constitution Committee.

Sir, I move.

Mr. Vice-President : Then we come to amendment No. 2232 standing in the name of Shri Mohanlal Gautam. Amendment No. 2233 also is in his name. The honourable Member is not in the House, so these two amendments go out.

The article is open for general discussion.

Shri Kuladhar Chaliha (Assam : General): Mr. Vice-President, Sir, one of the most vexed questions of political science is the problem of a Second Chamber. In the 19th century in Europe, Second Chambers were necessary in order to check hasty legislation, but in modern days even if a second Chamber is allowed to exist we must restrict its powers so that it may not be a clog on our progressive ideas.

Almost all the important States had Second Chambers in olden days, but Turkey and Bulgaria have dispensed with them. The Second Chambers are regarded as an essential element of feudal constitutions. They are the exceptions to the rule of the Constituent units not to have any Second Chambers anywhere. In the U.S.S.R. and in the Union of South Africa the Constituent units are all unicameral. In the Dominion of Canada we find that out of eight Provinces only two have Second Chambers. In the case of Switzerland out of 18 Cantons, except two, all the other 16 are unicameral. In Weimar Germany half the States were unicameral.

The Second Chambers seem to have been created by force of tradition. It seems that the vested interests—men of dignity and nobility—want that they should adorn the benches where they can find some defence against the attack on their rights. It is said that wherever there are vested interests which require defence, the Second Chamber will always be claimed. In India we find that where there are *Zamindars* they want the Second Chamber. We find from the claims made by the different Provinces that are now claiming the Second Chamber, there are the vested interests, there are the Zamindars, and they want to be protected against the majority. But then in these progressive days legislation will be held up if we have a Second Chamber, and therefore we should not allow these Second Chambers to exist. Yet, we find that there is a certain amount of desire on the part of some of the Provinces. Assam has rightly said that they are not in want of it; Orissa has also said that they are not in want of it and C. P. has also said that. It is in the fitness of things that they have done so.

A Second Chamber is nothing but a clog in the way of progressive legislation. In our old Central Legislature, by delaying tactics, we have held up the Hindu code for about four or five years. It is very easy to obstruct progressive legislation as we have done in the case of the Hindu Code. But if we have another Second Chamber I think it will only be adding further trouble in the way of passing progressive legislation. It is really very surprising that some of our Provinces are claiming that there should be Second Chambers even today. They should think that this is rather a burden to them than adding to their progress; the Second Chamber in the past has clogged some very good pieces of legislation in Europe and other countries. I think as a modern people we should get rid of these ideas and we should march forward. Therefore, we should not have Second Chambers in our country.

Secondly, there is another thing. We do not find a sufficient number of leaders in our Provinces to man the Second Chamber. In the smaller and backward Provinces we feel the difficulty and we have rightly voted against the Second Chambers. Even in the bigger Provinces I think we have not been able to produce a sufficient number of leaders who can man it very well.

An Honourable Member : That may be the case in your Province!

Shri Kuladhar Chaliha : I see. There may be an exception but then it does not prove the case—it rather proves the other way.

You will only be clogging the progress of the country by having second Chambers in Bombay, Madras and other Provinces, so that there may not be any advance. That is how things will be done. These four Provinces will be a clog to us and they will be a drag on our progress. Therefore, the sooner they get rid of this idea and the sooner Dr. Ambedkar withdraws that amendment, the better it will be for the country. Before accepting the amendment, I trust the House will consider it properly and see whether they would like their progress to be clogged, as they want to do.

Shri K. Hanumanthaiya (Mysore): Mr. Vice-President, Sir, the Draft Constitution makes provision for either unicameral or bicameral legislature, as the case may be; it leaves the choice to the States concerned and some States have chosen to have bicameral legislatures. Three States—rather Provinces—have chosen to have unicameral legislature. We are very familiar with the arguments for and against a bicameral legislature. I merely want to draw the attention of the House to the practical aspect of the matter. The people who advocate a bicameral legislature usually say that it is a device against hasty legislation My Friend Mr. Bharathi gave a very picturesque illustration.

I want my friends who are in favour of a bicameral legislature to remember that we are framing a Constitution for a responsible system of Government. That presupposes party system. Party system of Government works in a peculiar way and not in the way of unicameral or bicameral legislature as such. Every major decision is taken in the party meeting and not in the Upper House or in the Lower House. So the real legislature from the point of view of practical politics seems to me, Sir, to be the party meeting. Once the question is decided in the party meeting, it does not matter whether the question is brought up before the Lower House or the Upper House, or even if there are ten Houses; there is no question of preventing hasty legislation, once the party decision is taken on the subject. Hence when...

Shri O. V. Alagesan (Madras : General): Will not the members of the Upper House be the members of the party also?

Shri K. Hanumanthaiya : That is exactly what I was going to say. You are arguing for me. The party in power will certainly have under the Constitution we are framing a majority both in the Upper House and the Lower House, because it happens to be an elected legislature. Once the joint meeting of the Party Members of both the Upper House and the Lower House takes a decision, that decision goes through irrespective of the opposition or the arguments to the contrary. Such being the case, it is a costly formality to have two Chambers. My Honourable Friend Bharathi gave an illustration of a cup and saucer to show the utility of the Second Chamber. Whether it is the cup or the saucer into the which the coffee is poured, it is the pot that determines the temperature of the coffee. The pot here is the party meeting; it determines the way we have to vote. Therefore, I really do not see how the Second Chamber under the existing circumstances will be able to show us a better way or a sober way.

I have got another point, Sir. In a federation the legislative field is to a very great extent restricted so far as the legislatures of the unit are concerned. Much of the legislative field and administrative field is taken under the present Constitution by the Centre and what remains is very restricted. For that restricted field, to have two Houses, I fear, is really a very costly and unnecessary affair. Apart from the point of view of legislation, there is also the point of view of administration from which we have to examine this problem. The Ministers who are popular leaders have to devote much of their time to visitors. It is the experience of every Minister in India that much of his time is taken away by visitors and by people who come to see them for all sorts of purposes and very little time is left to them. If we have got two Houses, probably the Lower House will have to sit several months in the year and in addition to it

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the Ministers would have to spend necessarily much of their time in the Upper House also. I think practically they have to do talking all the time administrative work suffers in consequence. In fact, if I may claim to know a little of the working of the Ministries in India in the units and the States, they are usually charged with inefficiency. The speed with which administrative work used to be done in the olden days is not done now. That is the specific charge levelled against the various ministries in the units. I do not know how it is in the Centre. But the real reason is they have no time; they have to be talking all the time. It is better in the interests of efficiency and speed of the administration to do away with the Second Chamber.

Mr. Vice-President : Many speakers would like to speak on this subject.

Mr. K. Hanumanthaiya : Very well, Sir. I have done.

Shrimati Renuka Ray (West Bengal : General): Mr. Vice-President, I am one of those who hold the opinion that the bicameral legislature in the present context of things is unnecessary, if not retrograde. Sir, in India, particularly at the present moment, when we need to go through a good deal of legislation in the economic and social field, which has been long overdue during the years of foreign rule, I do feel that the Second Chamber, particularly in the provinces will be very dilatory. The only reason advanced for having a second Chamber is that we can thus prevent hasty or careless legislation. But, Sir, when there is a Governor, in the Province and a President at the Centre, who is empowered to send back to the legislature any Bills which may have been enacted carelessly, for revision, I do not think that this excuse obtains. However, Sir, the majority of provinces have decided to have a second chamber and therefore, in the present Constitution, we shall be embodying it. I want to point out only this, that even if we at the present moment do have to agree to have second chambers in the provinces, there should be some provision in the Constitution that the Second chambers can be got rid of as speedily as possible, not at the initiative or the votes of both Houses of Legislature in the provinces, but according to the desire of the Lower House alone. I do not think that it is right that whether a chamber shall continue to exist or not, should be left to that chamber to decide in any way. Although there is an article in the Draft Constitution regarding the manner in which the provinces may decide later not to have Second Chambers, if they do not wish to, that article prescribes that this can be done by both Houses of the Legislature. I hope, Sir, that when the time comes, at least the House and Dr. Ambedkar will agree that it should be the Lower House alone which shall decide whether the Second Chamber should continue or not. As I said before, I do not think that bringing in the Second Chamber is going to be helpful at the present moment. I do understand that the composition of the Second Chamber is going to be fundamentally different from the composition of the Upper Houses of the past. But all the same in the present context of things, as I have said, it will be very much better if we had just one Chamber. As we have seen during the past year or so, while this Constituent Assembly has been functioning as a Dominion Legislature and with an unicameral Chamber, even so the procedure by which legislation is enacted is slower than we desire. I do not see why it is necessary, particularly in the Provinces, that we should go in for a second Chamber, and if we do so, at least let us provide that the Lower Houses in the Provinces are in a position to rid themselves of this encumberance as soon as possible.

Shri O. V. Alagesan : Mr. Vice-President, Sir, the Principle of a second Chamber directly comes before us only today. It was considered by the House when the Report of the Provincial Constitution Committee was submitted to the House not in a direct manner, but in a sort of a backdoor way, I should say.

Shri L. Krishnaswami Bharathi : How?

Shri O. V. Alagesan : Because, the Honourable Sardar Vallabhai Patel, who moved the Provincial Constitution Committee report for the consideration of the House said that the Committee generally agreed that there should be only one House of legislature; but, then, he went on to describe the procedure that the Honourable Dr. Ambedkar just now told the House. The choice was left to the Members of the Constituent Assembly from the various provinces; they were asked to decide whether they should have a Second Chamber or not for their province. This liberty was good in a sense; but that very same liberty prevented the House from going into the question in a deeper way and examining it on its merits. When the Honourable Sardar Patel moved the particular clause dealing with this matter, he expressed the hope that the small provinces may not elect to have a Second Chamber. But, actually it turned out that the six provinces enumerated by Dr. Ambedkar have elected to have a Second Chamber. They did not do it, I submit, on merits. What has been originally conceived as an exception has come to stay as a rule.

Shri L. Krishnaswami Bharathi : May I point out, Sir, that the honourable Member was not present on that occasion and that therefore he is not entitled to say this?

Shri O. V. Alagesan : That was because I was not well. That does not take away my right to express my opinion.

Mr. Vice-President : Please try to address the Chair; do not try to reply to Mr. L. Krishnaswami Bharathi.

Shri O. V. Alagesan : Yes, Sir. That particular procedure made the Members of the various provinces think, "Let us have this ornament of a second Chamber." On the other hand, if the question had been placed before the House in a direct and straightforward way, I think the House might have decided against a second Chamber. That was my submission. Since this is the first occasion when we are dealing with this question on merits, this House has got every right to say that we shall not have a second Chamber now.

Then, it was said that these six provinces happen to be big ones now. In some future date they may get split up. Then, what is the provision? They cannot easily get rid of this second Chamber. Already there is an objection to the formation of linguistic provinces on the ground of their financial instability. This will be an additional reason for that, because, the cost of the second Chamber will be an unnecessary burden on the small provinces when they are formed.

Several speakers before me showed how a second Chamber is an unnecessary anachronism. I will say that this is a sort of an old age pension device for the politicians. When we deal with the composition of the second Chamber, I think I shall be able to explain how it will be a demoralising influence and not a helpful influence in the politics of the State. My Friend, Mr. Krishnaswami Bharathi, gave us the cup and saucer example given by Washington. I beg to submit that we have far advanced several centuries from the days of Washington and enlightened constitutional opinion in America today is against a second Chamber. Several experts have prepared a model constitution for the United States of America. They have omitted this bicameral system and have recommended only a unicameral legislature for the States. Though, up till now, only one State has elected to have a unicameral system. I shall quote an American authority on this specific matter and it will be clear how this Second Chamber acts as a reactionary Chamber. The argument often advanced in favour of the second Chamber is that it will be a check on hasty

[Shri O. V. Alagesan]

legislation by the lower Chamber. He shows how it is only a myth. The learned author says:

"While this idea might seem reasonable and logical, the practice of the bicameral system has contributed little or no evidence in support of this theory. On the contrary, large numbers of instances indicate that politicians have played one House against the other to defeat proposals for which there was a wide public demand, and that they have in this way succeeded in avoiding personal responsibility for their action."

In such unexceptionable words the bicameral system has been condemned by this author. So, I would like first of all that this principle of a second Chamber for the Provinces should be outright rejected by this House and if that is not possible, if the House does not propose to do that, I would request that there should be at least a provision by which the lower Chamber in any province will be able to do away with the second Chamber by a simple resolution. As it is, sub-clause (2) of article 304 was quoted. Even there, the procedure is rather complicated. When the majority in the Lower House is rather precarious, the Upper House, because it will naturally stand for its preservation, may defeat the purpose. Again, it has to be approved by Parliament to come into force. So, that provision should be altered so as to permit the lower Chamber to do away with the Upper Chamber by a simple resolution passed by a majority of the lower House.

Sir, I have done.

Shri T. T. Krishnamachari (Madras : General): Mr. Vice-President, Sir, I have listened with the attention that a discussion on a matter like this deserves, to the speakers that spoke before me. Speaking for myself, I am in sympathy with many of those who opposed the idea of the introduction of a second Chamber in the provinces. It is a matter that has been debated all over the world ever since the idea of constitutions came into being, whether second Chambers are necessary or not, and it admits of a wide room for difference of opinion. I am not, Sir, today concerned with examining whether it is right to have a second Chamber for the provinces or not. What I wish to point out to this honourable House is that this House on a former occasion has accepted certain fundamental principles which were intended to serve as a guide for the Drafting Committee to frame the Constitution. The question is whether these principles could be given the go-by means of the negation of an article, without the whole thing being overhauled or upset in the proper way, namely by a proper number of people wanting a complete change in a decision made by this honourable House on a previous occasion according to the rules made for that purpose.

Sir, it may be open to question what is a fundamental principle and what is not. For instance, if we had said that a President is not necessary for this Constitution, that would be going against a fundamental decision made by this House on the report of the Union Constitution Committee. Similarly, if we say that a Governor is not necessary for a State, that would, again, be going against a fundamental principle. It would not be, Sir, going against a fundamental principle based on a decision of the House if we say that the Governor is to be elected in such and such a manner or be nominated in such and such a manner or that the President is to be elected in such and such a manner. On the 18th of July 1947, this House accepted the broad outlines of the Provincial Constitution Committee's report, particularly in regard to Rule 19 which bears some relation to the article that is being discussed by the House.

The Honourable Sardar Vallabhhai Patel moved—

"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."

Actually, the provision was fairly carefully framed so as to give the maximum amount of latitude to each province to decide whether or not to have a second Chamber. Some of my honourable Friends have referred to the manner in which this decision was arrived at. Sir, after the particular rule was passed by this House, at the appropriate time the Secretariat of the Constituent Assembly sent summons for Members representing each particular province to meet on a particular day and arrive at a decision whether or not to have a second Chamber. Sir, I think it is not disclosing any confidence or making any breach of confidence if I say that I was one of those who stoutly opposed the introduction of second Chamber so far as Madras province was concerned in the meeting of the representatives of that province and I was outvoted, but I do not think that merely because the decision of a large number of Members who represented my province ran counter to my own views that I could take advantage of the discussion on this clause to go against not merely the decision of the legislators of my province but also against the decision arrived at by this honourable House on the 18th July 1947. Sir, the proper course undoubtedly would be, for such of the Members as feel that this is not the proper thing to do, to take advantage of Rule 32 of the Rules of procedure of the House and have the whole question mooted once again by getting the requisite number of Members to sign a requisition for reopening this particular question. That is the proper way to go about this business and I do feel that, though the House can ordinarily reject this particular article 148 either in its entirety or a portion of it,—there is nothing to prevent a sovereign House from doing a thing which it wants to do,—I think in all decency we cannot go against a principle which has been accepted on the 18th July 1947, a principle which was further supported by meetings of the representatives of the various provinces meeting separately and deciding whether or not a particular province will have an Upper House. It is a different matter completely if this House should decide that the constitution of the Upper House should be different from what it was decided on the 18th July 1947, or what is mentioned in this Draft Constitution as drafted by the Drafting Committee. I shall have something to say about that at the appropriate time. But we are perfectly entitled to say that the Upper House shall be elected in entirety by the lower House, that the Upper House should be nominated in its entirety by the Governor, that the Upper House should be elected from all kinds of mushroom constituencies, that the Upper House should only represent labour and not vested interests or conversely that the Upper House should only represent vested interests and not labour, or that there should be equal representation of both, and it may or may not have representatives of functional interests in the Province—all these things are matters in which the House has got perfect liberty morally to go into and make appropriate changes if it so feels disposed. But I do feel that in view of the commitments that we have already entered into on 18th July 1947 and a further reinforcement of that commitment agreed to by the fact that representatives of provinces have to second Chambers in those particular provinces which have been enumerated by the amendment moved by my honourable Friend Dr. Ambedkar, I think it is not right for the House to go further into the original question as to whether or not a particular province should have an Upper House and the matter should therefore be left at that and the article should be accepted in the form in which it has been presented to the House.

Shri Biswanath Das (Orissa : General): I do not like to inflict on this House a review of the working of the Upper Chambers in various States in the world. That is a function beyond the possibility of the limitations in which I am here. Sir, enough to say that the sort of second Chamber that is called upon to be constituted in the provinces is in many ways different from the ones that you find in very many States today functioning in the World

[Shri Biswanath Das]

Enough we have got a second Chamber at the Centre. The Second Chamber in the Centre is also shorn of the usual prestige and responsibility which is attached to it in advanced States like U.S.A. Nowadays it need hardly be stated that the Chamber which has an indirect election, and much less a Chamber having a nomination, has the least prestige and influence in the country and much less to arrest the progress of any legislation, be it hasty or revolutionary. Under these circumstances, the system that is being devised and kept ready to be utilized for the Second Chamber in the provinces is not very helpful. We have in it a conglomeration of various things. You have in it an indirect election, you have in it a nomination, you have in it an admixture of election and panel again leaving to the will of the Ministries. Under these circumstances, the system that is devised for the second Chamber is not useful and I must say that is not going to be helpful. Therefore it cannot influence the decision of the Lower House of which it will be merely a reflection—a sad reflection. Sir, secondly, it can not check hasty legislation if the Lower House is going to make any hasty legislation because of the limitation under which it is to work. Sir, under these circumstances the second Chamber that is devised for the provinces is not helpful and, need I say, will be a costly show. So far as our province is concerned, I must thank the honourable Members of this House and more especially those who are responsible for the decision of leaving this to the provinces. It is in the fitness of things that the delegates from the provinces are called upon to decide this question. I do not see how much could be said or stated against the point as was mentioned by Mr. Krishnamachari. True it is that it was left to the provinces. My friend says the provinces have decided. I do not know when they decided. I come from the Province of Orissa. We delegates from Orissa were never called upon to discuss this question except once and that decision was against the constitution of the second Chamber.

Sir, I have thanked, and I again thank the Committee as also the honourable Members of this House, for leaving this question entirely to the Provinces. Speaking for ourselves, we have taken extraordinary precautions in coming to the conclusion that we did. We intimated the Ministers, and also the Premier of Orissa who happens to be a Member of this honourable House, though he was absent. We also had the views of the Ministry, and we had before us the views of the Premier, and also those of the Member delegates. And to make ourselves doubly sure, we also invited the representatives of all the States who had merged into Orissa and also those of the States who intended to merge into Orissa; all these were invited and they were allowed to take part in the deliberations. Therefore, as a result of the combined deliberation of all these persons, unanimously we came to the conclusion, with the single exception of one Member, Mr. Sahu. We came to the majority conclusion that we shall not have a second Chamber. Sir, second Chambers are not useful. They are not helpful. As I have already stated, they are only ornamental. But if they were merely ornamental, that would have been something, because ornaments have their value, they make even things attractive. But here it is so very expensive, it entails such a heavy burden on the provincial exchequer, with no useful purpose, that it makes me feel that it is absolutely unnecessary and that it is an appendage which it is better if it is thrown out.

Mr. Vice-President : Dr. Ambedkar.

Shri H. V. Kamath (C. P. & Berar : General): Mr. Vice-President,.....

Mr. Vice-President : Mr. Kamath comes from the C. P. which has no upper Chamber. *(Laughter.)*

Shri H. V. Kamath : That is exactly, Sir, why I would like to speak.

Mr. Vice-President : I think the point has been sufficiently discussed. Some four more honourable Members would probably like to speak, but we have already spent one and a half hours, and we have to make a definite progress every day. I offer my apologies to those gentlemen who have been disappointed; that is all I can offer in the present circumstances. Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I regret I cannot accept any of the amendments that have been moved to this particular article. I find from the speeches that have been made that there is not the same amount of unanimity in favour of the principle of having a second Chamber in the different provinces. I am not surprised at the views that have been expressed in this House against second Chambers. Ever since the French Constituent Assembly met, there has been consistently a view which is opposed to second Chambers. I do not think the view of those who are opposed to second Chambers can be better put than in the words of Abbe Seiyes. His criticism was two-fold. He said that if the upper House agreed with the lower one, then it was superfluous. If it did not agree with the lower House, it was a mischievous body and we ought not to entertain it. (*Laughter*). The first part of the criticism of Abbe Seiyes is undoubtedly valid, because it is so obvious. But nobody has so far agreed with the second part of the criticism of Abbe Seiyes. Even the French nation has not accepted that view; they too have consistently maintained the principle of having a second Chamber.

Now, speaking for myself, I cannot say that I am very strongly prepossessed in favour of a second Chamber. To me, it is like the Curate's egg—good only in parts. (*Laughter*.) All that we are doing by this Constitution is to introduce the second Chamber purely as an experimental measure. We have not, by the Draft Constitution, given the Second Chamber a permanent place, we have not made it a permanent part of our Constitution. It is a purely experimental measure, as I said, and there is sufficient provision in the present article 304 for getting rid of the second Chamber. If, when we come to discuss the merits of article 304 which deals with the abolition of the second Chamber, honourable Members think that some of the provisions contained in article 304 ought to be further relaxed so that the process of getting rid of the second Chamber may be facilitated, speaking for myself, I should raise no difficulty (*hear, hear*), and I therefore suggest to the House, as a sort of compromise, that this article may be allowed to be retained in the Constitution.

Mr. Vice-President : I am now going to put the amendments to vote, one by one.

The question is—

"That for the existing clause (1) of article 148, the following be substituted:—

> '(1) For every State there shall be a Legislature which shall consist of such number of Houses, not exceeding two, as Parliament shall determine by law in each case; provided that it shall be open to the Legislature of any State to request the Parliament of the Union to change a bicameral into unicameral Legislature and such request being duly made and received, Parliament shall pass the necessary legislation'."

The amendment was negatived.

Mr. Vice-President : The question is—

"That in sub-clause (a) of clause (1) of article 148 after the words 'States of' the word 'Orissa' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is—

"That for amendment No. 2231 of the List of Amendments, the following be substituted:—

'That in sub-clause (a) of clause (1) of article 148, after the words 'in the States of' the words 'Madras, Bombay, West Bengal, the United Provinces, Bihar and East Punjab' be inserted'."

The amendment was adopted.

Mr. Vice-President : No. 2231, standing in the name of Shri L. Krishnaswami Bharathi need not be put to vote.

Now, the question before the House is:

"That article 148, as amended, stand part of the Constitution."

The motion was adopted.

Article 148, as amended, was added to the Constitution.

Article 149

Mr. Vice-President : Then we come to article 149.

The motion before the House is:

"That article 149 form part of the Constitution."

Coming to the amendments, I find that amendment No. 2234, and the first part of amendment No. 2235 are identical. No. 2234 may be moved.

(Amendment No. 2234 was not moved.)

Amendment No. 2235 may be moved, standing in the name of Mr. Lari.

(Amendment No. 2235 was not moved.)

Amendment No. 2240. The Member who has given notice of it is not moving it.

Amendment No. 2236 of Mr. Naziruddin Ahmad is disallowed as being verbal.

Amendment Nos. 2237 and 2238 are of similar import. The latter being the more comprehensive one may be moved. The Member concerned, is not moving it. Therefore amendment No. 2237 may be moved. This is also not moved.

Then we come to Amendment No. 2239 standing in the name of Shri Damodar Swarup Seth. It may be moved. I understand that the Member is not in the House. It is not therefore moved.

Amendment Nos. 2241 and 2242 are identical. Amendment No. 2241 may be moved. It stands in the name of Dr. Ambedkar.

An Honourable Member : It is not being moved. (Voices: 'Member not in the House') *(Laughter.)*

Mr. Vice-President : (Seeing the Honourable Dr. Ambedkar coming into the Chamber) Honourable Members are at perfect liberty to go out to take a cup of coffee or have a smoke. They will kindly realise the difficulties of those who are accustomed to both these types of relaxation. Honourable Members will agree that Dr. Ambedkar is entitled to relaxation of that sort. The Chair has nothing to do but to listen to the debates, but Dr. Ambedkar has to listen to the debates and reply. *(Laughter.)*

I understand that Shri Lokanath Misra and Shri Nand Lal are not moving amendment No. 2242.

Amendment No. 2243 is disallowed as it is verbal.

Amendment No. 2244 and the first part of amendment No. 2245 are identical. The latter may be moved. As the mover Prof. Shibban Lal Saksena is not in the House, it is not moved. Therefore amendment No. 2244 may be moved. The members concerned are not moving it. The second part of amendment No. 2245 is also not moved for the reason that the Member is not in the House. The next amendment, viz., 2246, standing in the names of Mr. Mohd. Tahir and Saiyid Jafar Imam, also is not moved, the Members concerned being absent.

Now, Prof. Shah may move amendment No. 2247, as also amendment No. 2248 immediately following.

Prof. K. T. Shah : Mr. Vice-President, as suggested by you, I shall move both the amendments now. I beg to move:

"That the following new clauses be added after clause (2):—

'(2-a) No person shall be entitled to be a candidate or offer himself for election to either House of a State Legislature, if Bicameral, or to the Legislative Assembly of the State, who is duly certified to be of unsound mind, or suffering from any other physical or mental incapacity, duly certified, or is less than 25 years of age at the time of offering himself for election, or has been proved guilty of any offence against the safety, security or integrity of the Union, or of bribery and corruption, or of any malpractice at election, or is illiterate.

No one who is unable to read or write or speak the principal language spoken in the State for a seat in whose Legislature he offers himself for election, or after a period of ten years from the date of the coming into operation of this Constitution, is unable to read or write or speak the National Language of India, shall be entitled to be a candidate for or offer himself to be elected to a seat in the State Legislature, or either House thereof.

(2-b) The election shall be on the basis of proportional representation with a Single Transferable Preference Vote. For the purpose of election, every State shall be deemed to be a single constituency, and every member shall be deemed to have been elected in the order of Preference as recorded by the electors; and this arrangement shall hold good in the case of a General Election, as well as at a by-election, if and when one become necessary:

Provided that where there is a second chamber in any State, the voters may be grouped, for electing members to the Legislative Council, on the basis of Trade, Profession, occupation or interest recognised for the purpose by an Act of the State Legislature, each trade, profession, occupation or interest voting as a single constituency for the entire State'."

and

"That clause (3) of article 149 be deleted and the following be substituted:—

'The representation in the State Legislature shall be on the basis of one representative for every lakh of population:

Provided that the total number of members in the legislative Assembly of a State shall in no case be less than sixty'."

There are several points in amendment No. 2247 which have, on an earlier occasion, been brought before the House. They refer to the disqualifications and qualifications which were stated while discussing the composition of the Central Legislature. The House apparently did not agree with me and, on that occasion, at any rate, rejected my proposal. I am again bringing it forward from the point of view now of the local legislatures, I hope with better fate.

The point, however, of great importance is that even if you cannot make all the voters literate within the time that the legislatures are constituted, you should certainly insist, in my opinion, upon candidates for the high office of the legislature to be qualified in certain ways, or not to suffer from disqualification in other ways.

[Prof. K. T. Shah]

The qualifications I have suggested are quite modest, not very exacting and in no way offend against the basic principles of democracy, that is to say, every individual should have the right to choose his representative. That being conceded, it may yet be desirable that those who offer to represent should at least have the minimum qualifications not of property, not of economic strength, not of any measure that indicates inequality as between citizens, but of capacity to render service, ability to understand the issues coming before them and honesty enough impartially to record their votes in the legislature so that you may have a fair legislation for the benefit of the country. I think that though it may be possible to have even between equally qualified and equally honourable men, differences on grounds of principle, we should differentiate between people who suffer from certain disabilities of the type I have suggested in this amendment. I put it to those who are responsible for this draft and to the House also that, even if we decide as we have decided and must insist upon that, without waiting for the coming of complete literacy, all the adult population should have the vote, we should nevertheless insist that the candidate must to start have certain qualifications and not suffer from certain disqualifications which I have tried to illustrate. These are only illustrations, not, so to say absolute qualifications or indexes of merit in themselves. I have stated nothing more than the minimum requirements for understanding the issues that would come before the legislature. As such I think it is but right and proper that at least in the case of candidates we must insist upon these qualifications. Those who become Members should similarly be free from certain practices or convictions against them; that may be taken also as the common-places of constituting legislatures and should not require any further argument on my part.

There is a point which I have made in a part of this amendment that deals with proportional representation. I am afraid the House is not in favour of that idea and therefore I will not labour the point. It is liable to be ruled out of order and therefore I shall not myself press it.

The last point stressed in my amendment No. 2248 is that the representation in the State Legislature shall be on the basis of one representative for every lakh of population: Provided that the total number of Members in the Legislative Assembly of a State shall in no case be less than sixty. The former is I admit an arbitrary selection. It may be varied. I only put it forward because I thought it is indicative of the State Legislature being really representative of large numbers of the population at the same time keeping the membership within manageable proportions. A lakh is a large number. Adult voters in a population of one lakh would be about fifty to sixty thousand and as such the possibility of securing a clear verdict on the multiplicity of issues that may be placed before the provincial electorates at the time of the general election would be too great to enable a voter justly to say that every single issue before that electorate has been clearly voted upon by all the voters even if all go to the polls.

But while recognising the limitation, I have also in mind the practical requirements of having legislative assemblies of manageable sizes and as such, this kind of arbitrary selection is necessary. That can only be remedied, I think, if you continue the process of legislative organisation in units of smaller and smaller population, that is to say, carry it from your huge provinces down to some district or municipal level where perhaps you will have a much more direct representation and therefore direct self-government of the people. But as the provinces or States now stand, it seems unavoidable to select a figure such as the one that is selected and for that I claim no more merit than that

it is likely to give you a more direct and more full representation of the people than any larger number. For the rest, the second part of the amendment gives the minimum and not the maximum. I am against keeping a clause which gives the maximum number of representatives to be found in any province of any State on the ground that by fixing such a maximum, whatever the figure may be, you deny the larger electorate really speaking, the right to assert itself. It is not that you are disfranchising, it is that you are combining them in such a manner that considerable portions may neutralise the effect of other portions and as such your representative body may not be truly representative. On these grounds I commend these two amendments to the House.

Mr. Vice-President : The next amendment is No. 2249 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad (West Bengal: Muslim): Sir, with your permission I wish to move the alternative amendment to this, *i.e.,* No. 48 in List II as I think that form it may be acceptable to the House. Sir, I move:

"That for amendment No. 2249 of the List of Amendments, the following be substituted:—

'That in clause (3) of article 149, for the words 'last preceding census', the words 'last preceding census of which the relevant figures have been published' be substituted'."

This principle has already been accepted in two other contexts. It is laid down in clause (3) that there should be one representative for every lakh of the population. It is stated also that that population will be found from last preceding census. My point is that the figures of the preceding census may not be available and in that case we may have to go to the immediately preceding census of which figures are available. Some doubt has been expressed in the House whether it would be wise to depend upon the 1941 census, that is to say, that the 1941 census is already obsolete in view of the mass exchange of population. Not only in the case of West Bengal and East Punjab but other Provinces also the population figures have been disturbed. So far as the next elections are concerned, I suggest that there should be a fresh census or some method of ascertaining the actual number of persons in each province and if communal reservations are allowed, we shall also need the figures on a communal basis. In any case, some method of ascertaining the population figures is absolutely inevitable. This principle has already been accepted.

(Amendment No. 61 of List IV was not moved.)

Mr. Vice-President : Amendment No. 62 of List IV standing in the name of Mr. T. T. Krishnamachari.

Shri T. T. Krishnamachari : Mr. Vice-President, Sir, I move:

"That with reference to amendment No. 2249 of the List of Amendments, in clause (3) of article 149, for the words 'every lakh' the words 'every seventy five thousand' be substituted."

Sir, as the House will understand, this amendment seeks to meet certain objections that may possibly be raised to fixing the figure at a lakh in the case of areas which are backward where the population is sparse but the area is very large. Such areas abound in the country in very many provinces. There are a good number of pockets where perhaps a whole taluk does not contain more than seventy-five thousand people. Actually in the Constitution we envisage that every voter should be able to exercise his vote, but distance happens to be a very important factor in the exercise of that vote. It might

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be that in an area where there are about seventy-five thousand people, if the total number of voters are roughly half of seventy-five thousand, because of the distance to the polling booth, even a fraction of the thirty five or thirty-seven thousand voters may not exercise their votes; and the problem therefore is that we must minimise those factors which will prevent the voter from exercising his vote. Actually, in the Constitution which is based on adult suffrage, we are making no provision with regard to transit for the voter to go to the polling booth. Distance will be a vital factor for a number of people in exercising their votes. Sir, it is a matter of common knowledge to Members of the House who have had to face elections that the person who has the largest number of conveyances is usually the person who succeeds in an election, though it often happens that people go in one person's conveyance but vote for another person: But, by and large, the person who is able to command the largest number of conveyances is able to secure the largest number of votes. If possible, we should minimise the effect of this particular factor operating in our future constitution. Having in view the peculiar conditions of our country, the peculiar conditions in the various provinces, it seems right that the limit ought to be lowered from one lakh to seventy-five thousand, though the sequel to it would be that there would be variations in the number of voters in constituencies, but we shall perhaps be able to insert provisions in this Constitution later on so as to minimise these variations to the lowest possible limit. Taking my own province, we may probably have six or seven such constituencies where the population will be seventy-five thousand, but this will not detract from the representative character of the legislature concerned or do any injustice to the areas which are more thickly populated. This is a saying clause which is very necessary in order to provide representation for the backward areas. I hope, Sir, the House will accept this amendment.

May I also move the related amendment which is No. 662.

Mr. Vice-President : You can do it later on.

Mr. Naziruddin Ahmad : I have a point of order. You will be pleased to find that in the notice sent to me with reference to amendment Nos. 2249 and 2250 that in the first place neither of these have been moved. Secondly, in place of 2249 I have moved another amendment and that has a reference to a different subject altogether. In fact it has a reference to the census but the present amendment deals with the number of units.

Mr. Vice-President : Kindly come up to the 'mike'. You are inaudible to me.

Shri T. T. Krishnamachari : May I suggest that the House has already agreed to his moving an amendment to his amendment No. 2249 and as such he may be restrained from raising any further point of order.

Mr. Naziruddin Ahmad : In raising this point of order I have nothing to say against the merits of the amendment. My point will be a technical one. It is said in this amendment that it is with reference to amendment Nos. 2249 and 2250. That is amendment No. 62 in List IV.

Mr. Vice-President : Wait, wait. Do not be in such a hurry.

Mr. Naziruddin Ahmad : This amendment is sought to be moved with reference to amendment Nos. 2249 and 2250. I have not moved the first one. But I have moved a substitute amendment with regard to No. 2250. If by implication a reference is being made to the substitute amendment. That will be found to relate to a different subject.

Mr. Vice-President : Your contention is that it is not right to move amendment No. 62 in List IV here.

Mr. Naziruddin Ahmad : Yes, I want to clarify the position.

Mr. Vice-President : The position is quite clear and the common-sense view is that it should come here.

Mr. Naziruddin Ahmad : In that case we should also get an opportunity of coming in by reference to other amendments. In that case I shall be happy.

Mr. Vice-President : I shall try to accommodate you as I have done except in the case of verbal amendments.

Shall we now go on to amendment No. 2250, standing in the name of Dr. Ambedkar?

The Honourable Dr. B.R. Ambedkar : Not moving.

Mr. Vice-President : In that case amendment No. 59 in List III falls through.

Amendments Nos. 2251, 2252 and 2253 may be moved one after the other.

Amendment No. 2251 is passed over as the honourable Member is not in the House.

Amendment No. 2252 is in the name of Shri Rohini Kumar Chaudhari.

Shri Rohini Kumar Chaudhari (Assam : General): Sir, here I am, moving an amendment after all! Sir, I move:

"That in clause (3) of article 149, for the words 'autonomous districts' the word 'State' be substituted."

I think, Sir, I have to cut short my jubilation because there is an amendment to this amendment and I think that it would be more acceptable. Therefore, Sir, I merely move this amendment so that the other one may be moved.

Mr. Vice-President : The amendment to this amendment stands in the name of the Honourable Shri Gopinath Bardoloi.

The Honourable Shri Gopinath Bardoloi (Assam : General): Sir, I move:

"That with reference to amendment No. 2252 of the List of Amendments, after the words 'autonomous districts of Assam' the words 'and the constituency comprising the Cantonment and Municipality of Shillong' be added."

It will be seen, Sir, from the amendment that has been proposed by Mr. Krishnamachari, which I hope the House will accept, that the old formula of a lakh of population has been substituted by 75,000 population. That could apply I feel to all the places except the "autonomous districts of Assam" which the amendment of Mr. Krishnamachari contemplates. By this amendment we propose to exclude also the constituency comprising the Cantonment and Municipality of Shillong. That Constituency consists of about 38,000 population. At present it represents not only a constituency with a seat for a male, but also a female constituency. That is to say, a constituency of less than 40,000 people, represents two seats today. To exclude it altogether from the category of a constituency without allowing any representation whatsoever would in my opinion be very wrong. In view of that, I have tabled this amendment and I hope the House will accept it.

[The Honourable Shri Gopinath Bardoloi]

In connection with the amendment which has been tabled by Mr. Rohini Kumar Chaudhari, I want to add this only. What that amendment proposes to do, is to exclude altogether the Province of Assam from the operation of the clause about the lakh population. I feel, Sir, that with the acceptance of the amendment proposed by Shri Krishnamachari our difficulty about the number of seats will be easy to solve. What is more, the difficulties which might otherwise arise—the same sort of difficulties that have arisen in this Assembly over the number of seats—would be obviated if we accept a general formula. In my opinion the 75,000 formula is a good one. Therefore, I do not think there is any necessity for taking into consideration the motion of Mr. Rohini Kumar Chaudhari tabled in No. 2252. I therefore request the House to accept my proposal that the constituency comprising the Cantonment and Municipality of Shillong be excluded from the operation of this 75,000 clause proposed by Mr. Krishnamachari.

Mr. Vice-President : The next amendment No. 2253 is in the name of Rev. Nichols-Roy. As he is not in the House it is passed over.

(Amendment No. 2254 was not moved.)

The Honourable Dr. B. R. Ambedkar : Sir, I beg to move:

"That for the proviso to clause (3) of article 149, the following be substituted:—

'Provided that where the total population of a State as ascertained at the last preceding census exceeds three hundred lakhs, the number of members in the Legislative Assembly of the State shall be on a scale of not more than one member for every lakh of the population of the State up to a population of three hundred lakhs and not more than five members for every complete ten lakhs of the population of the State in excess of three hundred lakhs:

Provided further that the total number of members in the Legislative Assembly of a State shall in no case be more than four hundred and fifty or less than sixty'."

Mr. Vice-President : There are a number of amendments to that amendment. Shall I call the movers one after another? There are amendments Nos. 31 to 34. No. 31 stands in the name of Mr. Sidhwa.

Mr. R. K. Sidhwa (C. P. & Berar : General): I am not moving it, Sir.

Mr. Vice-President : No. 32 stands in the name of Prof. Shibban Lal Saksena. The honourable Member is not in the House. Nos. 33 and 34 stand in the name of Shri Kamleshwari Prasad Yadav; he is not in the House. Then we come to No. 49 standing in the name of Mr. Naziruddin Ahmad.

Mr. Naziruddin Ahmad : I beg to move:

"That in amendment No. 2255 of the List of Amendments, in the proposed first proviso after the words 'the last preceding census' the words 'of which the relevant figures have been published' be inserted."

Sir, the principle has already been accepted.

Mr. Vice-President : Then we have amendment No. 63, standing in the name of Shri Jaspat Roy Kapoor.

Shri Jaspat Roy Kapoor (United Provinces : General): Sir, I am not moving it. Nor am I moving amendment Nos. 64 and 65.

Mr. Vice-President : Then we have No. 66 standing in the name of Shri T. T. Krishnamachari.

Shri T. T. Krishnamachari : Sir, I beg to move:

"That in the proviso to clause (3) of article 149, for the words 'three hundred' the words 'five hundred' be substituted."

This, I think, will not necessitate the House accepting the amendment of Dr. Ambedkar. Dr. Ambedkar's amendment seeks to explain why and wherefore the limit should be raised from 300 to 450; the logic of it is explained alongwith the manner how it is to be computed, but this is not necessary in view of the fact that there will be a body coming into being, whether constituted by the Provincial Legislature or by Parliament in whichever way the House might ultimately decide, which will definitely lay down how the maximum of the number of Members of each Lower House of the Legislature in a Province should be arrived at. Therefore, I think it is not necessary to go through the process of explaining in what manner the number is to be raised beyond the figure 300.

It is also felt that the figure 450 may not be adequate in the case of the large provinces with a growing population, particularly, for instance, U. P. and Madras, where the population is much above the 50 million mark. Therefore it was felt that 500 will not be an unduly large number in view of the fact that the House itself has approved of this limit for representation to the House of the People so far as the Centre is concerned.

These factors have emboldened me to move this particular amendment which I think appropriately enough should be an amendment to Dr. Ambedkar's amendment and which I hope he would be good enough to accept and withdraw his own amendment, so that the House can decide straightaway whether it would like the figure to be raised from 300 to 500.

Sir, I move.

Mr. Vice-President : Then we come to No. 2256 standing in the name of Begum Aizaz Rasul.

Begum Aizaz Rasul (United Provinces : Muslim): Sir, I move:

"That in the proviso to clause (3) of article 149, for the words 'three hundred' the words 'four hundred and fifty' be substituted."

The House will remember that last year when the discussion on the different clauses of the Constitution was taking place, the House decided that the maximum number of Members in any House in the Provincial Legislature should not exceed 300. Later on, it became apparent that my province, the United Provinces, stood to lose a great deal by this clause. The population of the United Provinces, is over 55 million and it would be very unfair to that Province if the maximum number of Members for the Lower House was fixed at 300. I think this honourable House will agree that some amendment in that direction is necessary. The reason why I supported the maximum number of 300 members last year was that a House consisting of more than 300 Members would be a very unwieldy House and the discussions in a very big House on legislation would not give results that would be conducive to good working of a legislature in a State. But as I have made it clear, our Province stands to lose a great deal if this maximum number is adhered to and I am therefore moving this amendment.

I am glad to see that the Chairman of the Drafting Committee, the Honourable Dr. Ambedkar, has also seen the injustice and the unfairness of limiting the number of Members to 300 and is moving an amendment to that effect. My amendment, therefore, is strengthened a good deal by the amendment that has been moved by the Honourable Dr. Ambedkar. I hope that the number of 450 will be accepted. Though according to the population our number really should have been above 550, considering that a House of 550 or more would be an extremely unwieldy House, I feel that the number of 450 serves the purpose and we would be willing to make a sacrifice and have a lesser number of Members than our population demands. I hope, therefore, that this amendment of mine, if it is supported by the Honourable Dr. Ambedkar, will be accepted by the House.

[Begum Aizaz Rasul]

With these few words, I move this amendment.

Mr. Vice-President : There is an amendment to this amendment, No. 35 of List No. 1 standing in the name of Pandit Thakur Dass Bhargava. Is he moving it?

Pandit Thakur Dass Bhargava (East Punjab: General): I am moving another amendment, Sir.

Sir, I beg to move:

"That with reference to amendment No. 2249 of the List of Amendments, in clause (3) of article 149, after the word 'census', the following be added:—

'except in the case of East Punjab and West Bengal where fresh census will be taken to ascertain the population before the first elections under this Constitution'."

This is a very simple amendment and I need not take the time of the House for pressing it. The exodus has resulted in the variation of the proportion of the population in the Punjab and West Bengal and the population concerned is not so trifling as to be ignored. Therefore, it is absolutely necessary that fresh census should be taken. If fresh census is not taken, then some other means must be found whereby the population of these parts may be ascertained rightly. Unless this is done, the difficulty will be that in regard to reserved constituencies, such communities as for instance, the Muslims, who have gone away from here, five million of them, will get much more representation than would be allotted to the Hindus and Sikhs, who have come in very considerable numbers—I think they are more than four millions. Therefore, my submission is that either fresh census should be taken or some other steps should be taken to see that these words "last preceding census" do not entail hardship to the rest of the population, who have come here.

I, therefore, submit, as was observed by me two days back that either a fresh list of electors should be so prepared and the population should be ascertained from that source if that is possible, but my humble submission is that it will be more or less a conjecture. The right thing would be to take a fresh census of these two Provinces before the first elections are held.

Mr. Vice-President : You may also move your next amendment.

Pandit Thakur Dass Bhargava : So far as this amendment is concerned, this relates to Amendment No. 2260 and I will move it after that amendment is moved.

(Amendments Nos. 2257 and 2258 were not moved.)

Mr. Vice-President : Amendment No. 2259 stands in the name of Pandit Thakur Dass Bhargava and two others and amendment No. 2263 stands in the name of Prof. Shibban Lal Saksena. These two amendments are of similar import. Amendment No. 2263 may be moved.

Prof. Shibban Lal Saksena (United Provinces : General) : Mr. Vice-President, Sir, I beg to move:

"That for amendment No. 2263 of the List of Amendments, the following be substituted:—

'That after clause (3) of article 149, the following new clause be inserted:—

(3a) The ratio between the number of members to be allotted to each territorial constituency in a State and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as practicable, be the same throughout the State'."

Sir, if we glance at clause (3) of article 149 together with the amendment of Mr. Krishnamachari, just moved, in every Legislative Assembly, we shall

have the maximum of 500 and a minimum of 60, but there is no provision that every constituency shall be equal. In my Province of U. P. there may be one constituency of 25,000; there may be another constituency of 2 lakhs and a third even 3 lakhs. This is something which leaves a lacuna in the Constitution. I cannot understand how the constituencies can be so different, one having 1 lakh, another 2 lakhs and a third 5 lakhs. This is certainly a grave lacuna in this Constitution.

I only want to draw the attention of the House to sub-clause (c) of clause (5) of article 67, wherein we have provided, although it is one representative for every 5 to $7^1/_2$ lakhs, that the ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the last preceding census shall, so far as practicable, be the same throughout India. It is provided that the constituencies shall be equal and that means if in the U. P. we decide to have constituencies of the average size of $6^1/_4$ lakhs, then so far as practicable, the representation will be equal. But this will not be so in actual practice; one will be 5 lakhs and another $7^1/_2$ lakhs. Therefore all the constituencies shall be equal and the same throughout India. Similarly I want in the States also the same and when there are various constituencies, they must be nearly equal. I think that unless this is provided for in some of the provinces, there will be grave consequences. There may be provincial jealousies which may play a role; some may get the upper hand and may be able to provide those seats. They may have more seats, having one for 10,000, and there may be others where they do not want to give more seats and they may provide one seat for 2 lakhs. I therefore think that what we have provided as safeguard in article 67 should be followed. I hope, Sir, this amendment will be accepted by the House, especially Provinces like East Punjab and West Bengal who will be particularly affected. Sir, I move.

Mr. Vice-President : Amendment No. 2259 cannot be moved, but it can be voted on. Does Pandit Thakur Dass Bhargava want that a vote should be taken on this?

Pandit Thakur Dass Bhargava : No, Sir.

(Amendment Nos. 2260 and 2261 were not moved.)

Mr. Vice-President : Amendment No. 2262. Verbal; disallowed.

Pandit Thakur Dass Bhargava : With your permission, Sir, I move an amendment to Mr. Shibban Lal Saksena's amendment number 67, which runs thus:

> "That after clause (3) of article 149, the following new clause be inserted:—
>
> > '(4) The ratio between the number of members to be elected at any time for each territorial constituency and the population of that constituency as ascertained at the fresh census mentioned in clause (3) shall so far as practicable be the same throughout the East Punjab and the West Bengal Province'."

In moving this amendment, Sir, I base my case on article 67 (3) which we have already passed. I have just heard an argument from my honourable Friend Mr. T. T. Krishnamachari who said that they want to arrange the constituencies in such a manner that such constituencies as have not got facilities of communication might be given a less number of electors whereas those constituencies which are developed in point of communication etc., may not have the same number of electors. My humble submission is that this will not be fair. If you do not make all the constituencies equal or so far as practicable equal in the provinces, there will be much confusion and bitterness. I understand the real notion of democracy is one man one vote and not a collection of men and a collection of votes. It is not areas which we are recognising, but

[Pandit Thakur Dass Bhargava]

the number of population which we are recognising for giving a candidate to a particular constituency. Therefore, my humble submission is, that the principle which the House has already accepted in relation to article 67(3) is the sound principle. Otherwise it might happen that in East Punjab and West Bengal such constituencies might be formed as may not be equal for all the communities. This will engender a great amount of bitterness and confusion. Therefore, my humble submission is, so far as East Punjab and West Bengal are concerned, first of all a census must be taken and after that, it will be best to have as far as possible constituencies with equal numbers of population. If the original amendment of Mr. Shibban Lal Saksena is passed by the House, the difficulty in East Punjab and West Bengal would be that the last census is not accurate and does not represent the true percentage of the communities. Therefore, I have moved this amendment to bring it into line with the previous amendment that I have already moved that a census must first be taken and then the constituencies must be so arranged that they represent almost equal number of the population.

Sir, I move.

Mr. Vice-President : The article is now open for general discussion.

Shri R. K. Sidhwa : Mr. Vice-President, Sir, in clause (3) of this article, there was originally a proviso that the total number of Members in the Legislative Assembly of a State shall in no case be more than three hundred or less than sixty. When this proviso came up for discussion last year, the House will remember, I opposed it very strongly; but, Sir, I did not carry the House with me. I am very glad that on second thought, the Drafting Committee have thought it themselves advisable to make an improvement on this proviso, and remove the words three hundred and increase it to four hundred and fifty. There is an amendment now proposed that the maximum should be five hundred. I am atleast glad that though the fullest latitude and fullest opportunity according to the population,—one member for every seventy five thousand or one lakh of the population—will not be given even under this maximum, this deficiency which would have considerably come in the way of equal representation in the legislature has been removed.

Similarly, Sir, last year, when we were discussing one of the clauses regarding the term of the legislature which was proposed by the House as four years, I moved an amendment to extend it to five years; and the House did not accept it. But when our Constitutional Adviser went to foreign countries, he was advised that in Ireland and other countries, the term of a legislature was five years; and the proposal has come before us and that we have accepted. This shows that our amendments are not considered on merits, but on personalities. However, Sir I do not want that credit to myself; but I am very glad that this amendment has been brought before the House today after mature consideration.

It has been stated, Sir, that the larger the number of members, it will be a cumbersome Assembly. I cannot understand this. If three hundred is not an unwieldy number, I fail to understand how the number five hundred could be regarded as cumbersome. Why should we be apprehensive of a larger number? Are there not in foreign countries legislatures of six hundred and seven hundred? You are copying the Constitution of the Parliament of England. Are there not 600 members in the House of Commons? I want to know where is the harm. If these provinces the United Provinces and Madras, which are the largest, are not going to accommodate and give an equal right of returning members to the legislature, then, they have no business to remain so large. They must be prepared for a partition if they are not going to take in 600 members according to their population. I am of the view, Sir, that if there is to be one member for every 75,000 of the population, the number of seats in the United Provinces

comes to 650, and why should they deny that right to 150 members. If you are afraid of a larger number of members in your province, you must be prepared to increase the limit from 75,000 to 1,25,000. That is a different matter. So long as you accept a certain percentage or proportion, then there must be uniformity and you should not deny the right of returning members because you are a big province. Provinces must be prepared to accommodate everybody; one should not say that he has no accommodation and therefore he is not prepared to increase that number. Similarly is the case of Madras. If there are five crores of population, there must be 500 members. But, with all that, I am really very glad, and I congratulate the Drafting Committee, that they have, though at a late stage, seen the wisdom of increasing the maximum number. Sir, I entirely support the amendment of my friend Mr. Naziruddin Ahmad about census and I go further than that and support my friend Pandit Bhargava. This matter has been repeatedly stated in this House that you cannot ignore the exodus and the number of persons who have migrated from one province to another and without taking a proper census, you cannot be really doing service to that class of people who have unfortunately come out. I know the Constituent Assembly has issued an order to the Provincial Governments that irrespective of residential qualifications, their names should be entered in the electoral rolls; but I know in certain provinces, *e.g.*, in Bombay, it is not being fully followed. It is merely an executive order and the authorities are not going to take that into consideration seriously because they feel that it is a very expensive method and unless they are given sufficient money for the purpose, sufficient enumerators etc. It is not possible to put in the census all those refugees who have come out from Pakistan. I therefore feel, while there has been no official announcement on this matter, Dr. Ambedkar should make an official statement on this matter as to really what would be the position even under the amendment of Mr. Naziruddin which I understand is going to be accepted. It is stated 'latest census'! What is the meaning of that? Will it mean that all those who have come from Pakistan will be really enumerated in the electoral rolls? If that is so, the language is not very clear and some sort of declaration will have to be made, if we are not going to put that in the Constitution, that the provincial Governments should bear that in mind in preparing electoral rolls.

Sir, I am happy that an improvement has been made in the proviso that whatever the number, the members should be elected according to the population basis that we are going to accept, *viz.,* 75,000. With these words I support, Sir, this article.

Sardar Hukam Singh (East Punjab : Sikh): Mr. Vice-President, Sir, I will confine myself to the amendment moved by Mr. Thakur Dass Bhargava and I fully support that. It is very essential that census must be taken before elections are held. Mr. Thakur Dass Bhargava has confined himself to two provinces and as we know, there has been mass migration from these provinces. If we were to rely on the previous or last census, certainly it would be very unfair to these provinces. I take this opportunity of bringing it to the notice of the Government that besides being unjust and unfair to the provinces, if this last census were to be relied upon, it will be particularly harmful to my community—the Sikhs. As is well known, they have not confined themselves after coming over from the West Punjab by settling in the East Punjab. They have gone further and in large numbers to the Provinces of Delhi and U.P. If we were only to depend upon the previous census, and for the present only fresh electoral rolls were to be prepared, then as we are proposing in the new constitution that seats would be reserved, as is so far provided in the Draft—and we do not know if this will be changed afterwards but so far we can safely say that seats are to be reserved on the population basis—then it will be very unfair. Mere preparation of electoral rolls would not give them sufficient representation because in Delhi and U.P.

[Sardar Hukum Singh]

they would not get any representation if the last census were to be relied upon. My humble request to Government is that census should first be prepared and then elections should be held and particularly of these provinces, Punjab and Bengal because otherwise it would not only be simply unjust and unfair but would be definitely harmful to my community.

Dr. Monomohan Das (West Bengal : General): Mr. Vice-President, Sir, some apprehension appears before our mind about the word last preceding census in article 149. This point was cleared by our Honourable Law Minister during the time of the discussion of some previous articles. Some of our friends have brought amendments to the effect that new census should be taken, at least in the provinces of West Bengal and East Punjab before the elections are fought. I like to add one-point to the arguments that have been put forward for taking a new census before the elections. Sir, vehement propaganda by some political parties was carried on during the last census of 1941 in Bengal. The contention of the propaganda was that Hindus as a nation should not give any caste against their numbers. So about 44 lakhs of Hindus were mentioned with no caste mentioned against them. From the census it cannot be known how much or what part of the 44 lakhs of Hindus are from Scheduled Castes and what part are from Caste Hindus. Now a controversy has arisen between the Scheduled Castes of West Bengal and the Caste Hindus. The Caste Hindus claim that all these 44 lakhs of Hindus belong to Caste Hindus only and the Scheduled Caste people claim that a substantial part of this 44 lakhs are Scheduled Castes.

Shri Mihir Lal Chattopadhyay (West Bengal : General): May I know whether a person is bound to give his caste when the census is taken?

Dr. Monomohan Das : I am not speaking of the question whether he is bound to give his caste or not.

Mr. Vice-President : Will you please allow me to make a few remarks. There is a sense of grievance and as I have said, whatever the technicalities of the case be, let the sense of grievances be ventilated. Very often when a grievance is ventilated, it loses half its rancour or its passion. Remember that you wanted five minutes but you have already spent five minutes.

Dr. Monomohan Das : If a new census is to be taken before the elections, then we have nothing to quarrel but if for some reasons, the new census is not taken before the elections and the records of the 1941 census be taken as our guidance for the new elections, then this point must be solved by the Government. I mean, Sir, what part of this 44 lakhs Hindus are Caste Hindus and what part of them are Scheduled Caste. Sir, I thank you for this opportunity.

Shri Rohini Kumar Chaudhari : Mr. Vice-President, Sir, I hope honourable Members will excuse me if in this discussion I speak only of Assam and nothing but Assam.

Honourable Members will be pleased to recollect that a short while ago I read out an amendment in which I had asked for making an exception in the case of Assam. I wanted such an exception because there was this qualification of one lakh population for a constituency. If that condition had remained, a great mischief would have been done to the people of the province of Assam. But fortunately that condition has been removed by the amendment which the House was pleased to accept and which was moved by Mr. T. T. Krishnamachari. In order to make the position more comprehensible, I would like to draw the attention of the House to page 188 of the Draft Constitution, and Part I of the Table there. There, the autonomous districts have been enumerated. There are the Khasi and Jaintia Hills District, excluding the town of Shillong, the Garo Hills District, the Lushai Hills District, the Naga Hills, the North Cachar, and the Mikir Hills portion of Nowgong and Sibsagar Districts. Now, in the

Khasi and Jaintia Hills District, as also in the Mikir Hills, portion of Nowgong and Sibsagar Districts, there is a large population which does not belong to the tribal denomination; and if article 149 stood as it did originally, great harm would have been caused to these non-tribal people of these areas. If honourable Members will kindly look at sub-clauses (5) and (6) of article 294, they will find this—

"(5) The constituencies for the seats reserved for any autonomous district of the State of Assam shall not comprise any area outside that district."

So if the position had stood as it was before, then a portion of the city of Shillong—the Cantonment and Administration of Shillong, will not come under the constituency of the Khasi and Jaintia Hills District at all.

In article 294, clause (6) it is stated—

"(6) No person who is not a member of a scheduled tribe of any autonomous district of the State of Assam shall be eligible for election to the Legislative Assembly of the State from any constituency of that district....."

That is to say, if any portion which has a large population of non-tribal people is included in the autonomous district, that large portion of non-tribal people will be entirely disenfranchised. In that case, it is meaningless to have any right or franchise, if it does not take along with it the right to stand for election.

So far as Shillong is concerned, it has been excluded from the Khasi and Jaintia Hills, *vide* Part I of Table on page 188. If the population of Shillong is less than 75,000, then Shillong will not have any separate constituency. But by this amendment which was moved by Mr. Bardoloi, an exception has been made in the case of Shillong. If it stood as it was, in that case, the non-tribal people would not be included in the Khasi and Jaintia Hills, and they will be completely disenfranchised. The same difficulty would be felt in the case of the Mikir Hills also, because if the area which is inhabited by the Mikirs only are taken aside, then the non-tribal population in the Mikir Hills will not come to 75,000.

Now, one difficulty has been removed, by excluding Shillong from the operation of this 75,000 formula. My object in moving the amendment was that in order to remove all the complications Assam might have been made exception altogether. In the past, Assam has been made an exception in various matters, both in favour of and against Assam, mostly against Assam. I think there was at one time exception made in the case of Assam being considered a province—that was recommended by the Cabinet Mission. Similarly, it might have been possible and it might have been better if Assam had been entirely excluded and my amendment accepted. But wiser heads have thought that my amendment had better not be moved, and I thought, Sir, that I had to agree to that.

Mr. Vice-President : But you have not thanked me, Mr. Chaudhari, for making an exception in your case and allowing you to speak, though you have not moved the amendment.

Shri Rohini Kumar Chaudhari: Thank you Sir; but I did not speak on my amendment.

Mr. Vice-President : That is all right. I only wanted to make my position clear to the House. I allowed the honourable Member to speak, in my own unconventional way; he only read out the amendment. The convention was broken because Mr. Chaudhari had something important to talk about areas in Assam which had not been touched upon by Mr. Bardoloi.

Shri Raj Bahadur of Matsya Union.

Shri Raj Bahadur (United State of Matsya): Mr. Vice-President, Sir, I regret I have to express my dissent from the provisions prescribing and restricting the maximum number of representatives provided for the Lower House

[Shri Raj Bahadur]

in the Provinces. It has been restricted to a maximum of 500, and it has been provided that for every one lakh or 75,000 there shall be one member. But this provision is bound to lead to a disparity and in equality in the right of representation allowed to the people from province and province. We can easily see that in smaller provinces the people would get better right of representation, and hence a better vote, as compared to people in provinces where the population is bigger. For instance, if we take Bihar and Orissa and compare it with Madras or U.P. the people of Bihar and Orissa will be getting one member for every 75,000 and the people of U.P. will be getting hardly one member for a lakh and 25 thousand or a lakh and 50 thousand. I submit it would have been better if the scale of representation had been universal and uniform for all the provinces. It is obviously desirable that in our Constitution, the scale of representation should not vary from province to province or from State to State. Even the argument that the House would become cumbersome if no maximum is fixed, does not, I think cut at the root of my suggestion. We can see that in the House of Commons in England there are as many as 640 members and during the course of an experience of 300 years that number has not proved cumbersome or unwieldy to the oldest democratic State in the world. Therefore, it cannot be un reasonable to suggest that the people of U.P. or Madras should be allowed the full quota of members which may be calculated on the basis of one member for every one lakh or 75,000, of their population. Sir, I am submitting all this because I am interested in this matter as a representative of a State vitally affected by the proviso. The States which have merged or which are about to merge with the U.P. or other provinces are all interested in this question, because if you restrict the number of seats for example in U.P. or Madras to a maximum of 500, the people of such States which propose to enter these provinces will obviously stand to lose. The people of Bharatpur and Dholpur are eager to merge their identity with the people of U.P. because of their traditions, history, folklore, culture,, and language, etc., etc. If the people of Bharatpur and Dholpur are allowed the right of self-determination, which, I am sure, no Member in this House would deny them and if they go to the U.P., it will not be fair if all the 500 seats are already taken up by the present population of the United Provinces and the people of Bharatpur or Dholpur or of any other State which joins U.P., are deprived of their right of representation in the legislature.

Secondly, there is the question of those States which would merge after the first elections. We know that the boundaries of our provinces are still in a ferment. From day to day experience, we might come to realise that certain provincial boundaries have to be changed and consequently the population of certain areas would be affected. There should be some provision by which the population of the affected areas are secured the right of representation. Therefore, I submit that if there had been no maximum fixed it would have been much better. When the power to de-limit the constituencies and to take decisions on other consequential matters have been left to the discretion of provincial Governments under articles 291 and 312, it would be proper if the right of fixing the maximum number of members in the legislatures is also left to the discretion of the provinces or the States concerned.

Next, I wish to submit that the grounds of disqualification of a voter as provided in clause (2) of article 149 have been made exhaustive. We notice that these grounds have been limited to certain conditions only, and I think that the powers and authority of the legislatures of the provinces, also have been restricted, in this respect to the grounds mentioned in the said clause. But it is possible that cases of high treason, sedition, undischarged bankruptcy or illiteracy may have to be included among these grounds. Hence it would

have been better if the list of these grounds is not made exhaustive but only illustrative.

Lastly I have to submit that so far as the amendment moved by Prof. Shah is concerned, I do not see any ground for its acceptance. To disqualify a voter no certificates of unsoundness of mind or body are needed. When the grounds of disqualifications are laid down in the Constitution or in the Provincial Acts, there should be no necessity for such a provision. To revert to my first two points, I may submit again that in view of the changing boundaries of provinces and States, my suggestions may still be considered.

Pandit Lakshmi Kanta Maitra (West Bengal: General): Mr. Vice-President, while we are in the midst of discussion of article 149, I think quite unexpectedly a matter of very great importance has been raised and, fortunately several honourable Members have realised the importance of the subject and given their views or it.

Sir, there are two things in particular which should demand the very serious consideration not only of the Members of the House but also of those who are in authority. In the present case by 'those in authority' I mean my honourable Friend Dr. Ambedkar, the Honourable Minister incharge of the Bill, I mean the Draft Constitution.

Shri H. V. Kamath : This is not a Bill.

Pandit Lakshmi Kanta Maitra : I quite realise that. But Dr. Ambedkar is the one Member who has been piloting this measure in this House and so all the credit and discredit go to him. And I want to warn him that if there are certain matters which are likely to bring discredit to his fair name, he should desist from talking for a moment and listen to me.

Sir, the two points to which I would confine my observations now are, one, the representation in the provincial legislatures based on certain figures of population and, two, the principle of uniformity. What is more important and pertinent to the point is that, besides the quantum of representation, there is the other vital principle involved, namely, that there should be absolute uniformity with regard to the scale of representation based on that population.

Two amendments have been moved in this connection, one by Pandit Thakur Dass Bhargava which seeks to further amend the amendment moved by Prof. Shibban Lal Saksena. When these two amendments are read together, it will be realised that what is sought to be done by these amendments is nothing extraordinary, but bare minimum justice, political justice to all concerned. In a democratic State, the mechanics of representation cannot be based on any haphazard or slipshod foundation. There must be a definite principle or principles on which the whole scheme of representation should be based. It should be based in such a way that the fundamental concept of democracy does not suffer. I think this proposition is beyond challenge.

Now let us see how it is going to affect certain parts of the Indian Dominion and certain States within that Dominion if article 149 is accepted by the House as it is. It is all very well to say that representation will be based on population which has been ascertained at the last preceding census. Theoretically it is absolutely unexceptionable, provided the Government is in the mood to wait for the elections till the normal general census in the country is taken. The decennial census would be due about the year 1950, a year hence. If it is to be held preparations must be set on foot from now on or six months hence if the census is to be taken very seriously and is to be conducted expeditiously before the year 1950 runs out. Now, on a previous occasion in connection with an earlier article, I explained at great length the dangers, the difficulties that certain provinces in India would have to suffer if the previous census figures, which for all practical purposes would mean the census figures of 1941,

[Pandit Lakshmi Kanta Maitra]

are acted upon in the case of West Bengal, East Punjab, Bombay and Delhi. The present amendment no doubt relates only to the two provinces, West Bengal and East Punjab. The House will remember that with regard to these four provinces including West Bengal and East Punjab, I emphatically declared—and I am glad that several members who followed me after that supported me—that it would be practically useless to depend on the census figures of 1941 with regard to representation in the new scheme of things. Who is there in this country, at least in this House, who does not know that the census figures of certain provinces were cooked up in 1941 with the object of getting political advantage in the succeeding stage of political reforms? That is all well-known, and is it necessary for me to repeat it in this House in season and out of season to those who are in authority? There should be a clear realisation of this position. Now, we are going to start on a clean slate. (At this stage the lights failed in the Chamber). It is all darkness. I see nothing but darkness for the province of West Bengal if this political injustice is done to them, as also in the case of East Punjab.

Mr. Vice-President : The needful will be done as far as possible. You please continue, Pandit Maitra.

Pandit Lakshmi Kanta Maitra : The difficulty is that I do not see whom I am addressing.

Honourable Members : You need not see our faces.

Pandit Lakshmi Kanta Maitra: Some times faces give encouragement. Sir, the House is aware that this principle of representation was accepted in the case of the Central Legislature, the Parliament of India, in article 67. The amendments now moved propose to bring the representation in the provincial legislature in line with that which has been provided and accepted by the House for the Parliament. Sir, the arguments I advanced on the last occasion need not be repeated now, but some of them will bear repetition here.

With regard to my ill-fated province of West Bengal and also East Punjab, I want the House to realise that the vast migration that has taken place in these two provinces should be officially recognised. It has been recognised for relief and rehabilitation to some extent, but for political adjustment, for granting political rights and franchise, this recognition is equally necessary. I deem it more necessary than the question of rehabilitation and resettlement. You cannot effectively rehabilitate and resettle people, unless at the same time you give them political rights and privileges for the coming governance of the country. Therefore, Sir, I think that this question should be decided by the authorities under pressure from this House. There should not be any further dilly-dallying or shilly-shallying with this question. The problem is very simple. It is this that the 1941 census figures have not been accepted by us with regard to the province of West Bengal. That is also true of East Punjab. West Punjab has been completely denuded of Hindus and East Punjab has been similarly denuded of Muslims. Therefore the census figures of 1941 are absolutely no guide to the real position of things with regard to East Punjab. With regard to west Bengal, I pointed out—and I point out this once again and, I hope, for the last time—that this migration started not from 1947 only. This migration started since the end of 1941 when Japan entered the war against Great Britain. Vast areas of East Bengal now comprising Eastern Pakistan were evacuated by orders of the military aurthorities for various military preparations such as the construction of airfields, areodromes and other military installations. Those areas were completely cleared and the people were driven in quest of their livelihood to the province of West Bengal, particularly to Calcutta and Greater Calcutta, the industrial areas where numerous production centres had been opened. Thousands and thousands of

people came over with their families to West Bengal from areas like Chittagong, Tippera, Chandpur, etc. for personal safety from the Japanese bombs which were dropped on those areas and which was not a pleasant experience to have. Then came the disastrous famine of 1943. My province has the unique distinction of having a number of calamities, one closely following another, and yet the province has survived. Do you want it to survive or do you want to give it a death blow and extinguish it for ever? Are you going to give West Bengal minimum political justice or not? I ask this simple question and want a straight answer. Sir, the famine of 1943 brought lakhs and lakhs of people to West Bengal from East Bengal in quest of food. Even today in West Bengal the price of rice per maund is Rs. 16 or Rs. 17, whereas it is about Rs. 50 in East Bengal, which is supposed to be the granary of Bengal. In those days, there was more chance of getting food in West Bengal and Calcutta than in the desolate corners of East Bengal. We do not know what is the population position now. The Famine Commission put the deaths at thirty lakhs. Every community claims that it is that community who suffered most.

An Honourable Member: It is the Scheduled Castes who suffered most.

Pandit Lakshmi Kanta Maitra: I have heared this statement from responsible quarters that it is the Scheduled Castes who suffered most. It is true. It is the women and the children who were the worst sufferers. The whole point of my contention is that in this province after the last census had taken place the situation had developed from year to year to such an extent that the whole equilibrium— if it existed at all— in the proportions that are given in the census figures, has been completely destroyed. Then came the division of the country and the partition of the Province of Bengal into East and West. The House is aware that the undivided province of Bengal got cut up into three parts—West Bengal, East Bengal and North Bengal: the districts of Jalpaiguri and Darjeeling were allotted to West Bengal. It had a tongue of Pakistan territory in between and migration has been going on both in the northern area from this area of Pakistan and throughout the southern portion.

Mr. Vice-President : What I am afraid of is that both of us coming from the same province, and I being in agreement with your views, Members may say that I am partial. That is an ordeal which I would like to avoid.

Pandit Lakshmi Kanta Maitra: I do not want to create any embarrassment for the Chair. So far as I am concerned, I am not a novice in Parliamentary activities and I get the indulgence of the House. If the House so desires I will stop.

Honourable Members : Go on, go on.

Mr. Vice-President : Now it is all right. You can go on.

Pandit Lakshmi Kanta Maitra: This migration has been going on and it is perfectly open to the authorities, if they want to shirk any responsibility for the unfortunate victims from East Bengal, to quarrel about the figures but the fact is that migration is continuing. Does my honourable Friend, Dr. Ambedkar, the hero of this whole show, know that thousands of Scheduled Castes people are pouring into the Indian Union? I am sure he knows it. I look up to him to take a dispassionate view, because he is the one man whom we can get hold of here quickly, expeditiously and effectively perhaps! He is the one man who has to realise the gravity of this and to tell those who differ from him that this is a matter which must be tackled in right earnest. Some say the migration figures go into 15 lakhs. We have our own figures, but 20 lakhs is the official figure of West Bengal.

Mr. Vice-President : Today it is 20 lakhs !

Pandit Lakshmi Kanta Maitra: I can understand the position of the authorities to put down the figures as low as possible, but the fact is that at least 20 lakhs have been driven into the Indian Dominion by the very kind treatment of our friends in Pakistan, and more will continue to come; I am confident of that. But the whole question is: Are these people going to be left in the lurch? They have left their hearths and homes. They have left behind everything. I am talking of West Bengal, because the Punjab case is well known. They have all become destitutes and they have come over here. But there is less appreciation of what is happening there because the facts about it are being much less dramatised. Are these people not going to have any political justice and any representation, when they have cast in their lot with us in this Dominion and when they have settled down here and when they desire that they should be part and parcel of the Indian Union? They in their own way joined in this struggle for freedom and they made their sacrifices which are by no means negligible. It is all very well to say that if we want to take a census of East Punjab and West Bengal the elections will be deferred by one year. What does it matter? Are you going to deprive lakhs of people of their legitimate right of representation in the legislatures of the country? Do you want to have expedition at the cost of justice? That is a simple question you have to answer. Are we anxious to have expeditious elections at the sacrifice of these people? That is for you to answer. I am told that a rule of thumb has been invented by which the electoral roll will go on being prepared and thereafter it will be multiplied by two and the number of the population will be obtained. But why not go about it in a straight forward way and have a general census? With our resources will it not be possible to finish the census business and at the same time carry on the preliminaries for holding the elections? That Constitution has to be finalised and it cannot be finalised before August in any case: there is the Third Reading and all that: then there is the date for its coming into operation and then a date for the delimitation of constituencies. If you start now, you can hold a census for this province. In case you cannot do that, then some arrangement must be made for these unfortunate provinces of West Bengal and East Punjab. They cannot be made to fit in with your census figures because you demand that elections should be held forthwith.

Sir, the observation from an honourable Friend, who is closely associated with the honourable Member in charge of this Bill created some kind of consternation in our mind. His idea seems to be that the scale of representation could vary according to different parts of the country because some parts are well developed from the point of view of communications and others are not. This means that according to his idea— which, I believe, will catch the official mind, and I do not know whether it is a reflection on the official mind—that where 50,000 people can have representation by one Member, in another area 1,20,000 people will have one seat. This would be the height of injustice. Democracy demands that one man/one vote should have an equal value. There is a differentiation in value if 50,000 people are asked to elect one man and 1,20,000 people are also asked to elect only one man. There is a lot of difference. Therefore that will cause great discontent in the whole of East Punjab and West Bengal. This discontent borders on bitterness and I ask the Honourable the sponsor of this Bill, Dr. Ambedkar, to take steps to see how this can be eliminated so that we can go on in this business with perfect amity, concord and goodwill. Let no sense of rankling injustice be left in the minds of those who are clamouring for this bare modicum of justice. These two amendments provide that not only shall this representation be based on the figures of population but these figures must be the latest figures from a census to be held for the purpose, be it even an *ad hoc* census. In any case the census figures of 1941 will be no index of the real population of these areas. There has been a considerable change. That is one point.

The second point is that the sizes of the constituencies should not be made to vary from place to place in the sense that the population should not be made to vary. If you fix one seat for 75,000 or one seat for one lakh, by all means try to see that in every constituency throughout India the proportion is maintained—one lakh people having one representation or 75,000 people having one representation. But it will be a travesty of justice if 50,000 are given one seat and one lakh of people are also given one seat. There will then be enormous scope for jerrymandering. I think I should sound a final note of warning that this condition must cease. The authorities must make up their mind and make a declaration that so far as these two Provinces are concerned the census figures for 1941 will not be acted upon and that a fresh census will be taken or that a fresh mechanism for as certaining the real population figure of these two Provinces—West Bengal and East Punjab—is brought into action before this particular article is implemented.

Sir, I support wholeheartedly the amendment of Prof. Saksena as sought to be modified by Pandit Thakur Dass Bhargava. I thank you, Sir, and I thank the House also.

The Assembly then adjourned till Ten of the Clock on Friday, the 7th January 1949.

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CONSTITUENT ASSEMBLY OF INDIA

Friday, the 7th January 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

Article 149—(Contd.)

DRAFT CONSTITUTION—(*Contd.*)

Mr. Vice-President (Dr. H. C. Mookherjee): We shall now resume discussion on article 149.

Shri L. Krishnaswami Bharathi (Madras : General): Mr. Vice-President, Sir, article 149 is under general discussion. Sub-clause (3) is very important. Mr. T. T. Krishnamachari has moved two amendments with a view to reduce the scale of representation to 75,000 per representative. The clause refers to a scale of not more than one representative for every lakh of the population and further the proviso limits the number of members to a maximum of 300. The effect of the amendment of Mr. Krishnamachari, if accepted, will be to have not more than one representative for every 75,000 and the maximum of the total strength of the House will be 500. It is very difficult to understand whether an increase in the number of members to a particular legislature will add to the efficiency of the Assembly. But certain major provinces like the U.P. and Madras have desired this increase, and it is perhaps well that we accept it, but at the same time, I would like to impress the need for not filling up the total strength or the maximum fixed.

Sir, in America, though the scale of representation is fixed at about 30,000 per representative, I understand, actually it is ten times that number. If for every 30,000 a representative were to be elected, the Senate will be somewhere about 4,000, but really it is much less, and therefore, it must be borne in mind that this is only a maximum and it is for the Provincial Legislatures concerned to fix the number. Some Honourable Members felt the need for adding certain more representatives if States accede or merge later on. I would submit it is not wise to exhaust the number—500—and then ask for more. The wiser course will be to reduce the number, say to 450, at the initial constitution and then, if certain States merge later on after the Assembly is constituted, to provide for them. That will be a better course instead of adding further provisos to the clause.

Mr. Krishnamachari yesterday said that the idea of reducing the number to 75,000 is with a view to provide for backward areas, that is to say, the proportion in certain backward areas will be less; that is, in those areas there will be a representative for every 75,000 whereas in other areas naturally the proportion will be much higher. While I perfectly sympathise with the idea we should not, I feel, Sir, allow any loop-hole for gerrymandering later on. We have already had a similar provision in article 67, where we have stated that there shall be uniformity of representation throughout India. I would very much like, Sir, that within a province there must be uniformity as far as practicable in the scale of representation, that is to say, the variation ratio between the number and the total population in one particular constituency

[Shri L. Krishnaswami Bharathi]

shall as far as practicable, be uniform throughout, that particular State or Province. It is not absolutely possible to have mathematical uniformity. We cannot have 82,824 everywhere. It is necessary that we will have some variations, but that variation shall not be so great. It cannot be 75,000 in one constituency and two lakhs in another constituency.

Shri S. Nagappa (Madras : General): Not two lakhs but a lakh and fifty thousand.

Shri L. Krishnaswami Bharathi : There is no lakh and fifty thousand here. The principle of uniform scale of representation should be adopted. As far as practicable, there shall be uniformity. Sir, with the maximum of 500, I have certain figures. In the United Provinces the ratio of representatives will be a lakh and ten thousand per seat. In Madras it will be 98,682 per seat on an average, if we exhaust all the 500 seats, which is very unlikely; if the number is reduced, the proportion will be increased. I think though there is the scale of 75,000, both the U.P. and Madras cannot have the advantage because if they have 75,000, the maximum will be exceeded, and therefore, we have a lakh and ten thousand in the U.P. and 98,682 in Madras, per seat.

Sir, no doubt Mr. Krishnamachari said that it is with a view to provide for certain backward areas. I am afraid that cannot be introduced into the Constitution with this principle I mentioned in view.

I must inform this House of certain important matters in this connection. Madras is a composite province, consisting of 4 linguistic areas, the Andhras, Tamils, Malabar and Canarese. Sir, there are five districts, known as Rayalaseema in the Andhra part, which are really backward and which deserve every encouragement. There has been some understanding between the two groups of Andhra areas with reference to this matter. Rayalaseema consists of five districts, Bellary, Cudappa, Anantapur, Kurnool and Chittoor. There is another group called the coastal districts consisting of five or six districts, Vizagapatam, East Godavari, West Godavari, Kistna, Guntur and Nellore. In 1937, there was a kind of understanding between these two groups under which Rayalaseema, the famine stricken area, shall have equal representation on the basis of district. Sir, it has to be mentioned that these districts are sparsely populated and they very rightly claimed weightage, and came to some kind of understanding. We have it from the report of the Linguistic Provinces Commission that this matter has not been finally agreed to by the two groups. I do not want to go into the details of the question. I am only submitting that it is only with a view to provide for these backward areas that this limit is reduced. So far as I am concerned, it must be entirely a matter between the Andhras themselves to decide and into which I shall not go. But so far as other areas are concerned, if these five districts, the famine stricken districts of Rayalaseema are given representation at the rate of 75,000 per seat, and other areas have to provide otherwise, the ratio will be 107,000 per seat. I have worked out certain figures. They will show that Rayalaseema will get 116 seats, the rest of the Andhras will get 118 seats, Tamil Nad will get 216 seats, Malabar 36 seats and South Canara 14 seats on this basis. On this scale of representation, the balance will be entirely upset by this. That is to say, the Andhra group will get 234 seats whereas Tamil Nad will get 216 seats; the population of Andhras is twenty millions and that of the Tamils is twenty-three millions. So, all these things will raise difficulties. It is not in this province alone that we come across this difficulty; I am told similar is the case in other provinces. An honourable Member was telling me that in Bombay there are certain areas which are backward. It is just possible that there are other backward areas also. If we introduce this kind of thing, it will bristle with difficulties and it is not very good that we have it in the Constitution. At the same time, we must have

this principle. If this cannot be introduced, at least, we must inform the proper authorities, the Delimitation Committee that as far as practicable, there shall be uniformity throughout the State. That is the most important thing and therefore though I have great sympathy with the backward areas I support the amendment moved by Prof. Shibban Lal Saksena.

Shri Kuladhar Chaliha (Assam : General): Sir, it is really difficult to follow the argument of the previous speaker. We have our own difficulties in our province. For certain reasons, the last census was made in a way which did not show exactly what the population was. It was manipulated in such a way that the party in power had the figures according to their wish. In fact, there was inflation of certain communities and the figures were manipulated in such a way that the correct figures did not come out properly. It was like this: the General community was so reduced that it became only about 39.2 per cent. We find that the Tribal community went up as far as 29 per cent., the Muslims about 22 per cent. and the Scheduled Castes about five per cent. If a proper census is taken, probably, the General community would be further increased. Therefore, a census is necessary to be taken in Assam as well. I support Mr. Lakshmi Kanta Maitra that a new census should be taken in Assam; otherwise, the General community will suffer very severely and grievously.

It is necessary that in the fixing of seats and in the allocation of seats to different communities we should be fair and just to everybody. In the last census the figures were so manipulated that the General community has become a minority in Assam and if reservations are to be given with so-called minorities then, I think, they would be further reduced and they will have no proper place in the Constitution. It is like this. The General community has already suffered in the last census taken by the party in power. If reservations are going to be given to the tribal and other people who have not got the necessary number, seats will be taken out of the General community and the majority will be reduced to such a minority that they will have to be protected and they will have to be given reservation. I therefore request the House to take this into consideration that a new census should be taken in Assam also.

Apart from that, there has been a certain amount of immigration from Eastern Pakistan and West Bengal. There are certain Scheduled Castes and members of other communities who have also to be properly enumerated. There are a certain number of people who just go there for a few months and come back from Eastern Pakistan. We should ascertain the number of these people who go there simply for the purpose of earning something in the tea estates and other places. If without ascertaining these things, seats are given then probably we will be doing an injustice to the General community and other communities. I request the House that proper census be taken for Assam also and Assam be included in the census for which an amendment has been given by Mr. Rohini Kumar Chaudhari.

Shri S. Nagappa: Mr. Vice-President, Sir, this is a very important point especially from the point of view of the representatives of Rayalaseema. I do understand according to the fundamental principles, one cannot ask for weightage but this is not a communal weightage. We are not asking as a matter of social backwardness or political backwardness but this is economically an area that has been backward for centuries and ages and that is why representation given to this area will enable the representatives of this area to fight for their betterment. That was one of the reasons why the people of Rayalaseema especially in Andhra Desa have agreed to a pact called the Sree Bagh Pact in 1937, and there they said the representation between Rayalaseema and the Circars will be in the ratio of 6:5. There are five districts in Rayalaseema and 6 in the Circars and these 11 districts have entered into a pact that representation should go, irrespective of population, on the ratio of 6:5 even in the Cabinet but that is a pact entered by only two sections of one and the same province.

Shri L. Krishnaswami Bharathi : Representation in the Cabinet is not in the Pact.

Shri S. Nagappa : We are not asking this representation from Tamil Nadu. Now according to the principles laid down in the constitution here the representation will be given to Madras province and out of that there will be an Andhra quota. Out of this Andhra quota between Rayalaseema and Circars we will have our own agreement. For instance, if the Circars get a seat for every 125,000 for 75,000 the Rayalaseema may get one representative. It solves our problem. Why we ask this is because Rayalaseema is two-thirds of Andhra Desa in area but the population is only one-third.

Shri L. Krishnaswami Bharathi : That is not correct.

Mr. Vice-President : Please do not interrupt the speaker.

Shri S. Nagappa: From the figures here I can give my friend if he wants, the population of Circars is two-thirds and that of Rayalaseema one-third roughly, but the area in Rayalaseema is two-thirds of Andhra Desa.

This was the agreement we have entered into and I would request members to see that our agreement is respected. I do not claim this on broad principles; but it is due to the backwardness of the area economically and politically, that we have to claim this.

Prof. N. G. Ranga (Madras : General): Mr. Vice-President, we are all in favour of the general principle that so far as possible there should be no distinction within the same State, between one constituency and another, as far as its quota of representation in the local legislature is concerned. But at the same time there are certain special needs of certain areas based upon their social and economic conditions excluding communal considerations, religious considerations, any anti-national or unnational considerations in regard to which certain special provisions have to be made to enable the peoples of the politically and economically backward or underdeveloped areas to stand on their own legs and minimise the distinctions between them and the other more advanced areas if mere principles of uniformity were to be accepted. Sir, as Mr. Nagappa has just now told you, the representatives of these two sections of the Andhra Desa had met together in 1937 and come to an amicable settlement among themselves. I need not go into details in respect of population or their areas, but it is true that one area known as Circars is very thickly populated and the other area known as Rayalaseema is very thinly populated. The Circars is also economically a little more advanced and much less subject to famines than Rayalaseema. Therefore, these peoples have agreed among themselves that, from out of the usual quota of representatives that the Circars should be entitled to according to the principle of uniform representation as between one constituency and another, they would like to give away a portion and distribute it between these districts of Rayalaseema as per their own population basis. Now, this is an agreement that was reached when the Provincial Congress Committee was presided over by Dr. Pattabhi who happpens to be the Rashtrapathi today of the Indian National Congress. I happen to be the President of the Provincial Congress Committee today, and I am bound to honour that agreement. It is the universal wish of all the Andhras to see that this agreement is put into practice and is honoured so far as practicable under the present conditions, constitutionally and politically. Small variations this side or that side may have to be made and the parties concerned will be quite agreeable to that but this much of weightage we are all agreed to give to Rayalaseema. How it is to be given in terms of this constitution is a ticklish problem. All these years we have been very much worried about it and it is because of this uncertainty the relations between these two areas have come to be a little strained, because it was felt by the representatives of Rayalaseema that quite possibly this House might stand in the way of the

implementation of the Sree Bagh Pact. But now that this House has already given its consent to the principle of a certain amount of variation in the total strength of the population as between different constituencies so far as the Central Legislature is concerned varying from 500,000 to 750,000 as between any two constituencies, there has arisen the hope in our hearts that quite possibly the House might be willing to make it possible for us to make a similar distinction between the constituencies of Rayalaseema on the one side and the Circars on the other. It is only reasonable on our part to ask for this much of consideration from this House for three reasons. One is, this distinction has already been agreed to so far as the Central Legislature is concerned. Another is, the people concerned in these two areas are within the Andhra Desa and have already agreed upon it and there has been no dissentient voice at all in regard to this matter and the acceptance of this will only be conducive to the development of better relations between these peoples and greater contacts between them; and after all this House is interested in fostering more and more co-operation between the different sections of people in any one State than in simply sticking to some dull principle of uniformity and then not swerving this side or that side and not making any special provision in favour of any one area within this country. Thirdly, this House also accepted the advisability of making such exceptions when it has made this exception in the case of Assam. Assam also is faced with a similar difficulty so far as the tribal people are concerned. There, in the so-called autonomous tribal areas certain special provisions are made in this constitution in order to protect their interests and in order to safeguard or assure their orderly and speedy progress in the near future.

Sir, for the above three reasons, I appeal before this House, and also before those who are responsible for the drafting of this Constitution, and for helping us in drafting the various alterations we are deciding upon, to accommodate these special needs of Andhra, and thus to help us in looking after the special interests of Rayalaseema, and thus bring about greater harmony between these people.

Sir, I have to state only one more fact. The most important consideration that was placed before the Linguistic Commission which visited our areas recently is this. Some of the representatives of the Rayalaseema urged for the immediately formation of the Andhra Province and for the implementation of the Sree Bagh Pact, so far as it is practicable under the present circumstances, in the manner that may be accepted by this House and by Parliament so that it would be possible for the Rayalaseema people also to wipe out all the differences that there may be, between the Circars and the Rayalaseema. If you were to remove the difficulties that stand in the way of their coming together, then I can assure you that so far as this particular area is concerned—and it is nationally separated even now from the rest of the province, or State of Madras,—it will be possible for the Central Government to create this Andhra province without any difficulty whatsoever,—social, economic, religious or financial or any other difficulty. Therefore, I urge most sincerely before this House the advisability of making a special provision in the case of this area, just as it has already agreed to make a special provision in the case of Assam.

Thank you, Sir.

Shri Deshbandhu Gupta (Delhi : General): Mr. Vice-President, Sir, my Friend Pandit Thakur Dass Bhargava has already given arguments in favour of taking census of East Punjab and West Bengal before the next elections take place. I do not wish to take the time of the House, therefore, by elaborating the arguments which he has already advanced yesterday. I only wish to point out that Delhi falls under the same category as East Punjab and West Bengal.

Pandit Thakur Dass Bhargava (East Punjab : General): I mentioned that also.

Shri Deshbandhu Gupta: Thank you. Delhi too is in the same category because not only has there been exodus of many Muslims from Delhi to Pakistan, but Delhi is particularly affected by the large number of people who have come from Pakistan and who are now living in Delhi. Perhaps, Delhi is the only city whose population has been almost doubled by these changes of populations. According to the last census, the population of Delhi was about nine lakhs, whereas it is believed that at present the population is somewhere near 19 lakhs; taking the city alone it is about 15 lakhs. It is only fair, therefore, that when this question is concerned, Delhi's claim should not be ignored, and that it should be treated in the same manner as West Bengal or East Punjab.

Sir, I have nothing more to say, except that whatever assurances are given and whatever methods are adopted by Government for the satisfaction of East Punjab and West Bengal, for assessing the present populations of these areas which have been affected by the partition of India, the same methods should be made applicable in the case of Delhi as well.

The Honourable Shri Gopinath Bardoloi (Assam : General): Mr. Vice-President, Sir, I am speaking in reference to the amendment of Pandit Thakur Dass Bhargava, in respect of the census in East Punjab and West Bengal. I am sorry to point out that although in this House several references have been made regarding the population of Assam, the case of Assam was not taken into consideration along with those of East Punjab and West Bengal. Mr. Chaliha has just now spoken about the population position in Assam, under the last census. The last census was strongly opposed by the Congress Party in the Assam Legislature in 1941 on the ground that it did not actually represent the actual population strength of Assam. Now, things have very much changed under the partition arrangements and in the altered circumstances that have come into existence in the meantime. According to the official figures that we have got, about three to four lakhs people have come from East Bengal as refugees in the same way as large numbers have come from.....

Mr. Vice-President : May I ask the honourable Members there to take their seats?

The Honourable Shri Gopinath Bardoloi : People have come into Assam in the same way as people from West Punjab have come to East Punjab and people from East Bengal have gone to West Bengal. A population of four lakhs is not a small number, and to exclude them from any representation would, I believe be a grievous wrong, and it would be unjust. I therefore, suggest that Dr. Ambedkar be pleased to accept, in the category of East Punjab and West Bengal, Assam also. It is more or less, a formal amendment and the facts I have submitted have already been placed before the House. I have only to repeat my request that Assam also may be included in the category of East Punjab and West Bengal. I consider that any attempt at representation, without taking into consideration the inequity of the last census, as well as the populations that have come into Assam in the meantime, would be something which should not be tolerated. In view of this, Sir, I beg to submit that my proposal to include Assam with East Punjab and West Bengal be taken into consideration.

Shri Kallur Subba Rao (Madras : General): Sir, I wish to make a few remarks on this subject as I come from Rayalaseema districts. If the constitution-makers had provided in this article for maximum and minimum population strength for a seat, as they have done in the case of representation of the States in the People's House, it would not have been necessary to speak on this occasion at all. You have provided 75,000 as the minimum, but

have not set any upper limit. The difference between the Rayalaseema people and the Andhras is only about this. The Ceded districts are famine districts and are known to be so from the beginning of history. They comprise mainly mountainous areas. I represent a constituency or a taluk which is the largest in area or size with the lowest number of people. Even if you fix the minimum at 75,000 population for a seat, the voters of a constituency like mine would have to go 15 miles to the nearest polling booth to exercise their franchise. That is why we want that, on the population basis, the Ceded districts must be given more representation. And they are economically and politically backward. This drawback of the population of the Ceded districts has long ago been recognised and an agreement reached between the Andhras of the Circars and the Rayalaseema people. This arrangement does not affect Mr. Bharathi or the people of Tamil Nad. We are not going to deny the right or representation of Madura to Mr. Bharathi. We are only considering the representation of the Andhra area and whether Rayalaseema should get more and Circars less under the agreement. That is why we request the House to make a provision for upper limit so that in the State that is going to be formed, there may be amicability and agreement. There is no question of Rayalaseema being against the Andhra province. But the difficulty is one of representation. The population of Rayalaseema is 60 lakhs and that of the Circars is 125 lakhs. I request the House to accept the amendment.

Dr. B. Pattabhi Sitaramayya (Madras : General): Mr. Vice-President, Sir, I am sorry to have to intervene in this debate which has proved to be a somewhat controversial one. But, as one intimately connected with that part of the country around which the controversy has centred, I feel it my duty to say what we all exactly feel in the matter. There appears to be a little more in the controversy than appears on the surface. Whenever a controversial issue arises it is our habit of mind to say to the parties that are involved in it to come together, sit around a table and convince each other by easy arguments of love and not refer it to a third party for arbitration or adjudication. That is a noble principle. This noble principle has been adopted by the Andhra people. They are the second largest community in India, next to the Hindi-speaking people. Even leaving out the 85 lakhs of our people in the Nizam's territory whom we do not want to absorb unless they want to come in,—let there be no misunderstanding,—we who form three crores in all are about eighteen million in the Madras presidency in the northern part thereof. The Madras presidency has Madras as its capital and there, nearly half the population is Andhra and the other half is in the south of the city. They speak four different languages. In the Legislature of Madras, there is a babel of tongues. People do not understand one another. But that is a different matter.

Sir, we have been asking for a separate province for the last thirty five years. We were asked to wait till a National Government came to power. Though that National Government has now come into existence it appears that the claim for the division of Andhras appears to recede much further than ever before. Whatever it be, we have come to some kind of understanding amongst ourselves.

When I was President of the Andhra Provincial Congress Committee— an office which was thrust upon me—during the regime of the first Congress Ministry, we came to an understanding with the Ceded Districts or Rayalaseema on certain principles and on a very good basis. There it was a question of give and take. The people of the coastal districts, who are more advanced and who enjoy deltaic cultivation, are in every way more prosperous and have got the better of the people of Rayalaseema in trade, in commerce, in industry, in education and in public services, though the whole of the

[Dr. B. Pattabhi Sitaramayya]

Andhradesa itself is behind-hand, taken as a whole, when compared to the people of the southern part of the province. As between the two parts of the Andhradesa, the coastal regions are highly advanced and the other areas are highly backward. In these two parts, even the soil conditions are totally different. On our side you cannot even get a stone with which to drive away a dog, and on their side, you cannot get a clod of earth for any purpose what so ever. That side is stony and mountainous and its three-fifths of the area is inhabited by only about one-third of the population; and the rest of the territory, two-fifths in area is inhabited by two-thirds of the total population. Apart from the cultural, social commercial, industrial and economic advance, taking mere numbers into consideration, we are two times more numerous and more dense per square mile than they. If that be so, is it not a matter deserving the consideration of this House? Are you going to adopt your principles and your policies on the basis of the steam road-roller which levels down the tall oaks to the height of the short poppies? That is not desirable.

Sir, the other day, the case of Assam was presented to the House and the House was good enough to say, Well, we will make an exception in the case of Assam. There are four kinds of areas there. Therefore the rule of thumb does not apply. We cannot apply the same measure of representation to all the provinces of India. India is a huge continent with a variety of climates as well as surface and soil and civilization more or less. Therefore there are different degrees of progress in different areas. In those circumstances there must be some kind of elasticity in the methods and measure of representation employed. And what is the elasticity that we plead for? It is only this: Do not put the basis of representation as high as one lakh. Have 75,000 as the minimum so that the sparsely populated areas of Andhradesa may get 90 seats. When they get 90 seats, and for the rest of the area you have the quantum as one lakh, we will get 120 seats. By this means the disparity in representation between the two areas can be brought down and it will not be easy for the people of one area to override the interests of the people of the other area.

Now take the administration in the two areas. There is a complaint that one part of the country has not received that amount of attention which it is entitled to and therefore it has remained in a backward state. There is no tank-water or well-water to drink in that part of the country and perpetually famine reigns supreme. Almost every three years it has to be declared a famine area and operations costing crores of rupees have to be taken on hand. It would have been of great help if constructive endeavours had been made in time to ensure water-supply and other amenities in those areas. But nothing of that kind is done. Nobody listens to them. When the Andhra provinces comes into existence pretty large sums will have to be spent in that area. It is not an easy matter. But even so we have to give them help in order to bring their representation to a higher level. What is the good of India having self-government if the States are lacking in equal representation? I never considered India free so long as one Unit was under a despotic ruler. We have fortunately tided over that condition. What is the good of a province being considered independent when half of it, may two-thirds of it is backward, has no water to drink and no food to eat and is behind-hand both economically and educationally? We want to bring up the hilly areas of our country to the same level as ourseleves, even if progress in that direction may be slow. When that is the case, what is the meaning in the framing of a rule which will arrest the progress of the country? Therefore I say an off-hand solution may not be found helpful and in this behalf I wish to appeal to Dr. Ambedkar who has taken so much trouble in order to push this draft Constitution through this House. He has been circumspect, reasonable and eloquent and he has brought a comprehensive judgment to bear upon these

matters. We agreed day before yesterday to grant a seat for every 75,000 of the population. Unfortunately I had to go to Amritsar yesterday evening and came back this morning. In the meantime this amendment has come up. This amendment is harsh on one portion of the area. If it is not there, it would be harsh on the Punjab, it is said. Therefore the case of the Punjab has to be considered, the case of Assam has to be considered and the case of Andhra has to be considered. All these matters require attention. Make your rules therefore as elastic as possible. Give details attention to each of these subjects and then deal with them at leisure and not in a hurry. After all, for the preparation of the electoral rolls, all these details may not be necessary, though the furnishing of these details will greatly facilitate that task. Even if the electorates have to be formed, they can be formed in the month of May or June. We are in a hurry to prepare the electoral rolls and we must know the basis and we have passed a rule that twenty-one years should be the age limit. Therefore the provincial governments can go on with the preparation of their electoral rolls, but even if other points be necessary, I say, please take a little time and do consider and bring up this subject tomorrow so that we may have an agreed solution instead of trying to confuse the whole audience who may not be really able to grasp the full details or all the bearing of this subject. Beyond this, I will not say anything. Whenever we bring up a question, it is said, "Oh, let the Tamils and the Andhras agree". We agree. Then you raise the question, "Let all the Andhras agree". We agree. Then you say, "No this does not answer my rule of thumb." This kind of thing is meaningless and it looks as though the result, if not the intention, is to sidetrack the major problem. If the more advanced people say, "We do not want a seat for every seventy-five thousand or one lakh; we want a seat for two lakhs; we want to raise you to a position of equality with us", is it repugnant to your sense of justice? Is it repugnant to your political principles or administrative policy? I cannot understand that. Therefore please allow this matter to come up at leisure so that an agreed understanding may be arrived at.

Mr. Vice-President : So much goodwill has been shown to me by the House, so much kindless is bestowed on me that I suggest that I do not call upon Dr. Ambedkar to make his reply today but that we pass on to some other business, so that all the parties concerned may have an opportunity of putting their heads together and arriving at an agreed solution. After all, framing the Constitution is a co-operative effort and we must do all that we can to make it a success.

Some Honourable Members: Thank you, Sir.

Article 63

Mr. Vice-President : We shall now pass on to article 63.

The motion is:

"That article 63 form part of the Constitution."

(Amendment Nos. 1339 and 1340 were not moved.)

Amendment Nos. 1341 and 1342 are disallowed as being merely verbal amendments.

Amendment No. 1343 standing in the name of Mr. R. V. Thomas. I understand that he is no longer a Member of the House.

Amendment No. 1344 standing in the name of Mr. Naziruddin Ahmad may now be moved.

Mr. Naziruddin Ahmad (West Bengal : Muslim): Mr. Vice-President, Sir, I beg to move—

"That for clause (4) of article 63, the following clauses be substituted, namely:

'(4) The Attorney-General shall retire from office upon the resignation of the Prime Minister, but he may continue in office until his successor is appointed or he is re-appointed.

(5) The Attorney-General shall receive such remuneration as the President may determine'."

Sir, I have brought in this amendment to make this clause similar to a corresponding clause which appears in the provincial constitution. The House may be pleased to consider article 145. In article 145 there is provision for an Advocate-General for each State.

I feel that arguments which I may advance should be listened to by at least one Member upon whom so much rests, but with the lapse of time and experience one has to grow a little indifferent to the effect his speeches really produce in the House. In fact I find that Dr. Ambedkar is engaged in a very much more important conference, a subject which must be much more important than the subject matter of this amendment, but I think it will be needless or useless for me to wait upon the pleasure of Dr. Ambedkar's attention, and I think I should go on with the amendment, trusting that the House may by some chance accept my view.

Sir, article 145 deals with the Advocate-General who corresponds to the Attorney-General at the Centre. Clause (1) of article 145 deals with the appointment of the Advocate-General. Clause (2) corresponds to clause (2) of the present article. Clauses (1) and (2) of article 145 really correspond to clauses (1) and (2) of the present article. Clauses (3) and (4) of article 145 are really important. Clause (3) provides that "That Advocate-General shall retire from office upon the resignation of the Chief Minister in the State, but he may continue in office until his successor is appointed or he is re-appointed." Clause (4) provides that "That Advocate-General shall receive such remuneration as the Governor may determine." The provisions of theses two clauses do not appear in article 63. I submit, Sir, that the provisions of these two articles, 63 and 145, should be similar as they deal with two similar offices. One is the Attorney-General of India and the other is the Advocate-General of a State. The principle which I want to introduce by this amendment is that the position of the Attorney-General of India and that of the Advocate-General in the Provinces should stand on the same footing. In fact in the Provinces the Advocate-General is to form so much a part of the Ministry that on the fall or resignation of the Ministry he has also to retire. This is the principle in the U.K. where the Attorney-General has to retire along with the retirement of the Ministry. It is a wholesome principle that the Advocate-General forms part of the Ministry and stands or falls with the rise and fall of the Ministry. It is also necessary that the Advocate-General must function so long as he is not re-appointed or a successor to him is appointed, because routine work cannot otherwise be carried on by the Governor or any other officer, he being a specialist and his retention in office for that temporary period is desirable, and that he must receive a pay which the Governor may determine. I submit that a similar principle should apply to the Attorney-General of India. In fact he should also so much form part of the Government that he should also retire with the retirement of the Ministry. There is no reason why a difference should be made between the Attorney-General of India and the Advocate-General of a State. It may be, I do not know, that this difference was not intentional. It may be due to an accidental omission rather than deliberate policy. It is for this reason that I have attempted to draw the attention of the House to the difference and I suggest that the difference should be eliminated. As many honourable Members may not have any opportunity of considering individually

the difference between these two articles, I have pointed out the difference and I hope they will give the matter due consideration.

Prof. K. T. Shah (Bihar : General) : Sir, I beg to move:

"That in clause (4) of article 63, for the words 'as the President' the words 'as the Parliament by law' be substituted."

The amendment if adopted would change the article to read :

"The Attorney-General shall hold office during the pleasure of the President and shall receive such remuneration as the Parliament may by law determine."

I do not like even as it is the proviso of this article which would make the Attorney-General hold office during the pleasure of the President. But it may be that a convention would be established whereby the Attorney-General, as suggested in the preceding amendment, may form part of the cabinet, and may retire or take office along with the Ministry. If the constitution does not provide specifically to the contrary there is no bar to a convention of this kind developing and the Attorney-General ranking as the Chief legal adviser of Government, so that his office will technically be at the pleasure of the President.

So far as his emoluments are concerned, I think it would be proper if his emoluments are left not to be determined by order of the President, but by an act of Parliament as those of the Ministers. The President would, it is quite true, act on the advice of the Ministers; but even so the salary and allowances of the Attorney-General should be determined I think by an Act of Parliament, and should not therefore be varied in any particular term while, a given individual holds office, to the prejudice of that individual. I think the ground is perfectly simple and I hope the amendment will commend itself to the House.

Shri Prabhudayal Himatsingka (West Bengal : General) : Sir, I beg to oppose the amendments moved by Mr. Naziruddin Ahmad and Prof. K. T. Shah. The article as it stands is what should be accepted by the House. There is certainly difference between the Advocate-General of a province and the Attorney-General of India. Sub-clause (4) provides that the Attorney-General shall hold office at the pleasure of the President and I think that should serve the purpose. If there is a change in the Ministry that necessarily need not mean the going out of office of the Attorney-General also, but in the provinces with the change of ministry the Advocate-General should be required to retire unless he is appointed again. Therefore, I oppose the amendments moved and I support the article as it stands.

Mr. Vice-President : Dr. Ambedkar.

Mr. Naziruddin Ahmad : He has not listened. He is getting his instructions, Sir.

Mr. Vice-President : That is hardly a charitable remark to make.

Mr. Naziruddin Ahmad : It is not. I am forced to make the remark, Sir.....

Mr. Vice-President : Will the honourable Member kindly resume his seat?

The Honourable Dr. B. R. Ambedkar (Bombay : General) : Sir, I do not know whether any reply is necessary.

Mr. Naziruddin Ahmad : No, not at all ! There has been no debate on the amendment. It would be unfair to the House to be called upon to vote without any reply. Rather than have the amendment put to vote without any consideration, I would beg leave of the House to withdraw it.

Mr. Vice-President : Has the honourable Member the leave of the House to withdraw his amendment No.1344?

Some Honourable Members: No.

Mr. Vice-President : The question is:

"That for clause (4) of article 63, the following clauses be substituted, namely:

'(4) The Attorney-General shall retire from office upon the resignation of the Prime Minister, but he may continue in office until his successor is appointed or he is re-appointed.

(5) The Attorney-General shall receive such remuneration as the President may determine'."

The amendment was negatived.

Mr. Vice-President : The question is :

"That in clause (4) of article 63, for the words 'as the President' the words 'as the Parliament by law' be substituted."

The amendment was negatived.

Mr. Vice-President: The question is:

"That article 63 stand part of the Constitution."

The motion was adopted.

Article 63 was added to the Constitution.

Article 64

Mr. Vice-President : We now come to article 64. The motion before the House is:

"That article 64 form part of the Constitution."

There are two amendments (1346 and 1348) standing in the name of Prof. K. T. Shah. He may move them one after the other.

Prof. K. T. Shah : Sir, I move:

"That in clause (1) of article 64, for the word 'President' the words 'Government of India' be substituted" and,

"That in clause (2) of article 64, for the word 'President', where it occurs for the first time, the words 'Government of India', for the word 'President', where it occurs for the second time, the words 'Council of Ministers', and for the word 'President' where it occurs for the third time the words 'Government of India' be substituted respectively, and the following proviso be added at the end of clause (2):—

'Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry'."

The amended article would then read :

"All executive action of the Government of India shall be expressed to be taken in the name of the Government of India.

Orders and other instruments made and executed in the name of the Government of India shall be authenticated in such manner as may be specified in rules to be made by the Council of Ministers, and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Government of India:

Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry."

While accepting that the President would be the head of the Government, I shall do not quite understand why all the Government business should be carried on and orders issued in the name of the President. Even if you are following the practice in England, according to this draft, the orders etc. of the Government in England are by "His Majesty's Government". It is surely not so in India—at least I hope it is not intended that the Government in India would hereafter be described as "the President's Government". The Government is the Government of India, and I do not see why the impersonal and collective form should be substituted by the personal and direct form of the

President. In my reading of the Constitution this offends against every principle that this Draft Constitution is otherwise based upon and I see no reason why decisions of the Government of India in their executive sphere should be expressed in the name of the President. By the express provision of this Constitution the President is outside the turmoil of parties, while the Government of India is definitely going to be a party Government or even a coalition Government which may have varying fortunes. If so there is every ground to suggest that the orders of Government be in the name of Government themselves collectively and not in the name of the President. It is for that reason that the first amendment has been suggested.

The second amendment is consequential. Rules which will regulate the framing and issue of orders will of course be made by the Council of Ministers. The President should, therefore, not intervene at all in this direction and the orders will be expressed in the name of the Government of India. If by any chance or for any special occasion any Department has to issue, let us say, a circular or an ordinance or some particular orders relating to the doings of that particular Department, and the order concerned is expressed in the name of that Department or Ministry, that should not be itself invalidate the order merely because it is not spoken of as in the name of the Government of India. To me this procedure seems to be not only more simple but more in accordance with the theory of the Constitution, and therefore I hope the House will accept it.

(Amendment No. 1347 was not moved.)

Mr. Vice-President : The article is now open for general discussion.

Shri M. Ananthasayanam Ayyangar (Madras : General) : Sir, Prof. K. T. Shah who has moved the amendments Nos. 1346 and 1348 has tabled his amendments in accordance with a different scheme which he envisaged; and in pursuance of that he has tabled amendments almost to every clause, or to the majority of the clauses, in this Constitution. He wanted a different kind of Government in this country, namely, the Presidential system is opposed to the Parliamentary system.

Prof. K. T. Shah : On a point of correction, this is keeping the President outside the Presidential system that I wanted. It is on their Draft that I wanted to make the amendment.

Shri M. Ananthasayanam Ayyangar : I am glad that for once my friend has tried to help the other party. My friend, Prof. Shah will find that we have already given our seal of approval to article 66, which says :

"There shall be a Parliament for the Union which shall consist of the President and two Houses to be known respectively as the Council of States and the House of the People."

Therefore the President of the Union becomes an integral part of the Parliament of the Indian Union. In another section, the executive power is co-extensive with the powers of the Legislature. Thus at one stage he becomes a necessary element and at another stage he ceases to be in the turmoil of the day-to-day administration. Prof. Shah wanted by an amendment to article 66 to do away with the President and restrict it only to the two Houses—he wanted only one House. But the amendment was lost and the President has become a permanent fixture. So far as Parliament is concerned, I do not see any reason why the executive authority ought not to be exercised in his name.

Let us turn to article 42. It says:

"The executive power of the Union shall be vested in the President and may be exercised by him in accordance with the Constitution and the law."

That was also passed by this House. In view of articles 42 and 66, where in the one of case the President is the executive authority and in the other the

[Shri M. Anathasayanam Ayyangar]

President, with the two Houses, constitutes Parliament, the President has been firmly fixed up in both the places. This Article, that is article 64, is only carrying out the substantive provisions of articles 42 and 66, by saying that "all executive action of the Government of India shall be expressed to be taken in the name of the President".

He is the chief executive authority. He is the first person and in case of dissolution of Parliament, who is the person to dissolve it? It is the President who is vested with the authority. During day-to-day administration, except in regard to legislative portions and legislative enactments, who is to sign in the absence of Ministers? If the Parliament is dissolved the Ministry also is dissolved. If an occasion arises like that, the President has to exercise the powers.

Let us address ourselves to another reason that has been given. My friend Prof. Shah wants that executive action should be taken in the name of the Government. The President means the President on the advice of the Ministers. He cannot act independently. Action is taken in his name though it is action of the Government as a whole, that is, consisting of the President and the Ministry. Thus it is impossible to get him out of the framework. The President is the chief executive authority and he is an important link in Parliament. It naturally follows that executive action should be taken in the name of the President.

I oppose both the amendments of Prof. Shah—Nos. 1346 and 1348—and request the House to pass article 64 as it stands.

Shri Raj Bahadur (United State of Matsya) : Mr. Vice-President, Sir, I come here to oppose the amendment that has been moved by Prof. K. T. Shah. From the various amendments that he has been moving from time to time, I am led to think that he is moving according to a set plan and that he wants the Presidential system of constitution instead of the Parliamentary system of democracy for the country. But, with all respect to his erudition and experience, I see that he has not been consistent even in that. When we discussed article 42, by which the entire executive power of the Union is vested in the President, he himself moved two amendments, Nos. 1040 and 1045 to that article and one of his amendment reads as follows:—

"The sovereign executive power and authority of the Union shall be vested in the President, *and shall be exercised by him* in accordance with the Constitution and in accordance with the laws made thereunder and in force for the time being."

By implication it means obviously that all executive actions should be taken by and in the name of the President, which is exactly the import, meaning and the implication of article 64, under discussion. I, therefore, fail to see any reason for Prof. K. T. Shah to go now behind the terms of his own amendment, which he moved to article 42. What we mean clearly enough is that the entire executive power of the Union vests in the President and all governmental orders, and instruments shall be made in the name of the President. It is no anomaly and no inconsistency under any known democratic principles to get the orders issued in the name of the President and as such, I submit, there is no reason for the House to accept the amendment which has been moved by Prof. Shah.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, I do not think any reply is called for.

Mr. Vice-President : The question is:

"That in clause (1) of article 64, for the word 'President' the words 'as the Parliament by law' be substituted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That in clause (2) of article 64, for the word 'President', where it occurs for the first time, the words 'Government of India', for the word 'President', where it occurs for the second time, the words 'Council of Ministers', and for the word 'President' where it occurs for the third time the words 'Government of India' be substituted respectively, and the following proviso be added at the end of clause (2):—

'Provided that nothing in this article shall invalidate any act or word of Government expressed in the name of a particular Department or Ministry'."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 64 stand part of the Constitution."

The motion was adopted.

Article 64 was added to the Constitution.

Article 65

Mr. Vice-President : Amendment No. 1349 has the effect of a negative vote, and is, therefore, disallowed.

Amendment No. 1350 stands in the name of Shri H. V. Kamath and may be moved.

Shri H. V. Kamath (C.P. & Berar : General) : Mr. Vice-President, I move. Sir,

"That in clause (a) of article 65, after the word 'President' a comma and the words 'as soon as they are made,' be inserted."

This clause as it stands at present, reads as follows:—

"It shall be the duty of the Prime Minister—

to communicate to the President all decisions of the Council of Minister,....."

If my amendment be accepted by the House, the clause, as amended, would read thus:—

"It shall be the duty of the Prime Minister—

to communicate to the President, as soon as they are made, all decisions of the Council of Ministers."

The amendment is more or less formal, and only makes for clarity of the meaning of the clause. In my judgment, there is no need whatever for such a clause in the Constitution and I think that it may as well be incorporated in the Rules of Business of the Cabinet. But somehow or other, it has found its way in the Constitution and any amendment which seeks to eliminate it would be disallowed as it seeks to negative the motion. Personally I should have wished that the article as a whole were not there, because it is merely some of the Rules of Business of the Cabinet; and what they should do in this matter must be purely a routine affair and must have been embodied in the Rules of Business of the Council of Ministers. But as it has come before us, I would only move this amendment, with a view to obtaining greater clarity of this particular sub-clause(a), because decisions of the Council of Ministers, if they are not communicated as soon as they are made,—it may be, of course, that they will be communicated very soon after that—but to make it absolutely clear, we might as well provide for this, that all the decisions of the Cabinet must be communicated to the President as soon as they are made, so that if a contingency arises, as visualized in sub-clauses (b) and (c), the President may call for information and if the President so requires, any matter which has been considered by the Cabinet already, may be re-opened by them, as provided for in sub-clause (c) of this article. Delay perhaps may be dangerous in this matter as in so many others, and therefore with a view to eliminate any

[Shri H. V. Kamath]

delay, any procrastination in these matters, I move, Sir, that decisions of the Cabinet must be communicated to the President as soon as they are made. I move amendment No. 1350 of the List of Amendments and commend it to the acceptance of the House.

Mr. Vice-President : There is an amendment to this amendment No. 71 of List No. V (Sixth week) standing in the name of Mr. R. K. Sidhva—Member not in the House.

Then we come to Amendment No. 1351 standing in the names of Shri. A. K. Menon and Shri B. M. Gupte.

(The amendment was not moved.)

Amendment No. 1352 stands in the name of Prof. K. T. Shah.

Prof. K. T. Shah : This is a matter of detail and I would like to be excused from moving this amendment.

Mr. Vice-President : There is only one amendment now before the House and the clause is open for general discussion. Dr. Ambedkar, would you like to say anything?

The Honourable Dr. B. R. Ambedkar : No, Sir, I do not accept Mr. Kamath's amendment.

Mr. Vice-President : The question is:

"That in clause (a) of article 65, after the word 'President' a comma and the words 'as soon as they are made,' be inserted."

The amendment was negatived.

Mr. Vice-President : The question is:

"That article 65 stand part of the Constitution."

The motion was adopted.

Article 65 was added to the Constitution.

Mr. Vice-President : Ordinarily, we close at 1 P.M. in order to accommodate our Muslim brethren. Today, we close just now to accommodate ourselves. The House stands adjourned till 10 A.M. tomorrow.

Shri M. Ananthasayanam Ayyangar : May I request you, Sir,.....

Mr. Vice-President : The House has been adjourned; no further business can be transacted now.

The Assembly then adjourned till Ten of the Clock on Saturday the 8th January, 1949.

CONSTITUENT ASSEMBLY OF INDIA

Saturday the 8*th January* 1949

The Constituent Assembly of India met in the Constitution Hall, New Delhi, at Ten of the Clock, Mr. Vice-President (Dr. H. C. Mookherjee) in the Chair.

MOTION *RE.* PREPARATION OF ELECTORAL ROLLS

Mr. Vice-President (Dr. H. C. Mookherjee) : The item on the agenda is a motion from the Chair.

Shri H. V. Kamath (C. P. & Berar : General) : On a point of information, Sir, may I request you to be so good as to tell us under what provision of the Rules of Procedure of our Assembly this motion is being moved from the Chair ? To my knowledge, there is no such provision in the Rules of the Assembly which we have adopted, according to which a motion of this nature can be brought forward by the Chair. So, Sir, we would like to know under what extraordinary provision or rule this procedure is being adopted because I would say in all humility that the draft of the motion that is being brought forward before this House today is not merely not above criticism but also there is scope for correction not only from the point of view of draftsmanship but also that of substance as well. Therefore I would beg of you to tell us whether there is any Rule which we have adopted which authorises the Chair to bring forward a motion of this nature, and whether once having been moved from the Chair, all criticism and discussion would be shut out on this motion.

Shri Rohini Kumar Chaudhari (Assam : General) : May I also request you to kindly enlighten whether any amendment will be allowed on this motion because it contains some controversial matters also?

Mr. Naziruddin Ahmad (West Bengal : Muslim) : I also think that the resolution requires some amendments. If it is moved from the Chair, it will be impossible for us to suggest any amendments or even to discuss the same. I have already suggested to Sir B. N. Rau some amendments. In the circumstances it would be far better to allow some Minister to move the Resolution so that we can have a discussion on this. That would be far more satisfactory.

Shri R. K. Sidhwa (C. P. & Berar : General) : Sir, my point is whether this House is competent to pass a resolution of the nature that you are going to propose. I feel that under Section 291 it is the Dominion Parliament that can issue instructions regarding the franchise and the elections. Sir, you will remember that our President, I do not know under what authority, issued an injunction for the appointment of a Commission for the work of going into the question of the linguistic provinces; and my Friend Mr. Bharathi challenged that and wrote a letter to the President, saying that under Section 290, the creation of provinces can only be done by the Government of India and the Dominion Parliament. I would like to know, Sir, whether this House is competent to pass a resolution of the nature that you are going to propose in view of explicit provision under Section 291 of the Government of India Act.

Pandit Lakshmi Kanta Maitra (West Bengal : General) : Sir, so far, two specific points have been raised, one by my honourable Friend Mr. Kamath and the other by my honourable friend Mr. Sidhwa. Mr. Kamath wants you

[Pandit Lakshmi Kanta Maitra]

to point to the particular rule by which you are empowered to make a motion of the nature contemplated in today's agenda. With regard to that, I may say that it is a well-established procedure that on certain occasions, the President can move a resolution, if the House permits it. We had a precedent recently when Dr. Rajendra Prasad moved a resolution from the Chair—the condolence resolution on the death of Mr. Mohammad Ali Jinnah. We have got that precedent, and I do not think there is any bar to the Chair making this motion, though personally I would have liked Dr. Ambedkar or somebody else to move the resolution.

With regard to the other point, the one raised by Mr. Sidhwa, I feel, and I am sure the House will agree with me in that as this is a sovereign body, there is nothing to stand in the way of this sovereign body moving a resolution of this nature. Of course, the Constituent Assembly in the Legislative Section is competent to pass an order like this. But the Constituent Assembly, as the Constitution making body, has a much wider and larger sphere of power than the Constituent Assembly, Legislative Section, and I think it is perfectly right and it is perfectly within the competence of this House to pass a resolution authorising the Provincial Governments to go forward with the necessary preliminaries connected with the coming elections. Therefore, I think the second point raised, the one raised by Mr. Sidhwa, is not a very important one of substance.

Sir, another point was raised by Mr. Sidhwa, that in connection with the appointment of the Linguistic Provinces Commission. Of course, there is a good deal of difference of opinion with regard to that. There is one body of opinion which thinks that it was *ultra vires*. But I am not going to enter into the merits of that question and of the order appointing that Commission. But I would point out that no resolution was passed or moved in the Constituent Assembly for that purpose, and that point must be borne in mind. Here the question is entirely different. Here the House, the Constituent Assembly by a resolution is going to authorise the Provincial Governments to do certain things, and I think there is no illegality or irregularity about it.

Shri H. V. Kamath : Sir, on a point of explanation, I would only say that there is a world of difference between a condolence resolution and a motion of this nature. *(Laughter.)*

Shri R. V. Dhulekar (United Provinces : General) : Sir, I submit that this sovereign body can direct the Legislative Assembly. The necessary direction may be issued by this Constituent Assembly to its Legislative side to have this motion passed there, and so we can get out of the impasse that has been created now. If this motion is moved from the Chair here, there is on the one side the difficulty that amendments cannot be moved, and on the other side there is the objection that we are not here sitting as a legislative body at this time. Therefore, I would propose two ways, either of which may be adopted. This motion may be sent to the Constituent Assembly's legislative side. Or we may as well convert this Assembly for a day or two, or even for a day, to sit as the Legislative Assembly. I submit that either of these two courses may be followed.

Shri Jagat Narain Lal (Bihar : General) : Sir, may I propose a third course? That is that if there is no concensus of opinion about the resolution being moved from the Chair, it may be allowed to be moved by any member and then it may be taken up as an ordinary resolution and discussion allowed, though I do not think there is any room or any debate on it.

Pandit Thakur Dass Bhargava (East Punjab : General) : Sir, I beg to submit that so far as the question of illegality of the motion is concerned, it is perfectly competent for the Chair to make this motion. This is a sovereign body

and I do not know why such a motion cannot be made from the Chair. The only question which I wish the House to consider is whether this is the appropriate course. Usually motions from the Chair are such as are not subject to debate. But my difficulty is that this resolution contains very controversial matters and I myself have tabled two amendments to it. In regard to clause (4), my amendment seeks that the refugees should not be ordered or be burdened with the liability of filing a declaration of their intention, etc., etc. That is a very important point, because fifty or sixty lakhs of people being asked to go to a court to file such a declaration is no trifling matter. Similarly, in regard to clause (3), I have sent in an amendment that the date 31st March 1948 be changed to 31st March 1949.

Mr. Vice-President : I may be ignorant of technicalities, but may I point out in all humility that no reference can be made to any amendment till the resolution itself has been actually moved?

Pandit Thakur Dass Bhargava : Sir, I am not moving my amendment, but am only submitting that if this resolution is moved from the Chair, then no amendment will be allowed to be moved. I fully realise the anxiety of those who want elections to take place in 1950—and I am also of the same view, that the elections should take place as quickly as possible. Therefore, I want to be helpful rather than to be obstructive. But all the same I want the amendments to be allowed to be moved in the House. If the resolution is moved from the Chair we will not be allowed to do so and to have our say, in regard to clauses (3) and (4). Therefore the suggestion made by Mr. Dhulekar may please be adopted, and the matter may be sent to the Legislative Section, or a directive may be sent by this House to the Legislative Section and action may be taken by that body in response to the order from this Constituent Assembly.

Seth Govind Das (C.P. & Berar: General): Sir, I could not follow the controversy that has been raised here. I think, Sir, that the controversy has been raised on.....

An Honourable Member: In Hindi, please.

Seth Govind Das: *[The objections that have been raised here do not appear to me to be very appropriate. The fact is that we have adopted, during the last two or three days, provisions which are more or less similar to the ones for which the present motion is being placed before us and which are more specifically stated in it. I think that what is intended by this motion is only that the next elections should be held in 1950, and I believe that was precisely the intention when we adopted articles 67 and 148. In my opinion it is meaningless to debate the question whether the President has or has not the right to make this motion. The President always has certain inherent rights, even though they may have not been specified in the Rules. When the occasion arises he can make use of these inherent rights. Again it appears to me to be entirely meaningless to discuss whether this Assembly possesses or does not possess the right of adopting a motion of this kind, and I think so for the simple reason that we have asserted not once but many times that this Assembly is possessed of all rights of sovereignty. Moreover when I consider the motion itself, I do not find anything in it to which one can object. It may be that its wordings may be improved by minor changes here and there. But I am sure that no disaster would occur even if we pass the resolution as it is, without making any change at all. I have already said that some two or three days ago we approved almost all the proposals contained in the present motion. It is our desire that elections should be held at an early date and that these might be held in 1950 at the latest. This resolution contains specifically the provisions which all of us have already accepted. I therefore

*[ ] Translation of Hindustani speech.

[Seth Govind Das]

fail to understand what occasion there is for any debate on this motion. We have much other important work to do and it is but proper that the motion made by you be adopted unanimously by the House.]

Shri H. V. Kamath : May I only point out sub-rule (2) of rule 25 which says that notice of every motion shall be given by a Member? Sir, when you are the Chairman, I dare say you are not regarded as a Member.

Mr. Vice-President : It is rather embarrassing for me to have to defend the procedure I propose to adopt. But I recognise one fundamental fact and that is that this House is supreme and that there is need for a motion of this sort. These facts I cannot forget. I also maintain that, if this motion is adopted by this supreme Body, that by itself would justify the procedure. *(Hear, hear.)* That is my feeling.

Then, as regards the amendments, I find that only two have been received which of itself proves that I have practically the whole House behind my proposal. I therefore propose to move it from the Chair.

I was conscious that there are some learned pandits of rules and procedure who would try to prevent the Chair from moving this much-needed resolution. Therefore I have drafted out a statement which I shall now place before the House. Honourable Members will agree with me that there is necessity for the moving of this resolution and for the passing of it also.

We have been, during the past few days, devoting our attention in the Constituent Assembly to the consideration of the articles of the Draft Constitution relating to the Constitution and composition of our future Central and Provincial Legislatures. This, as honourable Members are aware, is with a view to enabling the necessary electoral machinery to be set up, so that the preparation of the electoral rolls and other connected matters can be taken in hand without delay.

As a matter of fact, the Constituent Assembly Secretariat has, under the direction of the President, already taken certain steps for the purpose. In some of the Provinces and States, the first stage of the work, namely, the preparation of the preliminary rolls, is almost complete. The articles which we have so far adopted lay down the principles and the basis on electoral work has to be carried out. But this is not all. We have also to indicate the time within which to complete the elections, as the electoral rolls will have to be prepared with reference to a set date, and prescribe authoritatively the qualifications for voters, etc.

This matter was considered at a meeting of the Steering Committee held on 5th January and that Committee decided that a resolution on the subject should be brought forward before the Assembly and that it would be in the fitness of things if such a resolution were moved from the Chair. Incidentally, the resolution will also allay the suspicions harboured in certain quarters, however unjustified such suspicions may be, that we are not very serious about bringing the new Constitution into force early.

I have further to remind the House that people outside do not very well appreciate the difficulties which we have to face today. I have been receiving letters from many quarters in India and, as the House is probably aware, I belong to a community which was formerly a minority and which is today a majority community. Now, members of my community with whom I have been in contact have been sending me letters from all parts of India asking why there is so much delay. These people do not seem to appreciate the difficulties which we are facing, namely, first of all, the troubles which happened, after India was partitioned, the refugee problem, our troubles in Hyderabad, out troubles in Kashmir and then the general disintegration of the economic

structure of the country. These people who do not appreciate these difficulties think that this august Body is delaying its work for reasons which are uncharitable and to which I do not want to refer. Doubtless many Members also have some knowledge of the state of feeling in the country. It is therefore necessary that these misgivings should be allayed. It is necessary that the public should know that we are seriously thinking about holding our elections at the earliest possible date.

I shall go further and say that I belong to a particular political organisation. I hope Members will admit that I have not allowed my political affiliations in any way to sway me in the way in which the work of the House has been conducted. That particular political organisation has been the target of attack from more than one quarter. It is therefore necessary that its position should be made clear. This is the reason why I am moving the following Resolution from the Chair. I hope honourable Members will appreciate its importance and pass it immediately without any kind of discussion or any kind of amendment which, again I may say, I do not propose to admit. *(Laughter)*

The motion is:

"Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the legislatures under the new Constitution may be held as early as possible in the year 1950.

Resolved further that the State electoral rolls be prepared on the basis of the provisions of the new Constitution already agreed to by this Assembly and in accordance with the principles here in after mentioned, namely:—

(1) That no person shall be included in the electoral roll of any constituency—

(a) if he is not a citizen of India; or

(b) if he is of unsound mind and stands so declared by a competent court.

(2) That 1st January 1949 shall be the date with reference to which the age of the electors is to be determined.

(3) That a person shall not be qualified to be included in the electoral roll for any constituency unless she has resided in that constituency for a period of not less than 180 days in the year ending on the 31st March 1948. For the purposes of this paragraph, a person shall be deemed to be resident in any constituency if he ordinarily resides in that constituency or has a permanent place of residence there in.

(4) That, subject to the law of the appropriate legislature a person who has migrated into a Province or Acceeding State on account of disturbances or fear of disturbances in his former place of residence shall be entitled to be included in the electoral roll of a constituency if he files a declaration of his intention to reside permanently in that constituency."

Shri H. V. Kamath : On a point of clarification only, may I ask, Sir, why, after having passed the two articles 67(6) and also 149(2), the disqualification of unsoundness of mind only has been included in clause (b) of para 1 of the motion, while both the other articles include other disqualifications such as crime or corrupt or illegal practice? This is only for clarification.

Another point is that in sub-clause (a) of paragraph (1) of your motion, it is stated that "no person shall be included in the electoral roll of any constituency if he is not a citizen of India," but unfortunately, Sir, we have not passed the article on citizenship and therefore it may raise difficulties for the enumerator or the officer in charge of the electoral rolls as to who is a citizen and who is not.

(Shri Rohini Kumar Chaudhari rose to speak).

Mr. Vice-President : Would you like to say anything on this matter? I cannot allow any amendment or any discussion, but if you want to answer the points raised by Mr. Kamath, you are quite welcome.

Shri Rohini Kumar Chaudhari: I want your clarification on a point. First of all, sub-clause (1) (b) of the motion says that "No person shall be included in

[Shri Rohini Kumar Chaudhari]

the electoral roll of any constituency if he is of unsound mind and stands so declared by a competent court". It means, Sir, that a man...

Mr. Vice-President: I am not allowing any discussion.

Shri Rohini Kumar Chaudhari: I am only asking a question.

Mr. Vice-President : Order, Order. Yes, Mr. Tyagi.

Shri Mahavir Tyagi (United Provinces : General): I beg to request you, Sir, to kindly reconsider your ruling of not allowing any discussion. I hope I have a right to make a submission to the Chair on the ruling of the Chair. If there is a resolution to which the whole House agrees, then such a resolution may be moved from the Chair. It is only such resolutions that are moved in Parliament by the Chair. If, however, the subject matter of the resolution is such that amendments are warranted, then it must not be moved from the Chair. I submit, Sir, that this is a sovereign body and as such the provincial legislative assemblies may quote your ruling of today. There may be occasions in future when resolutions are sought to be moved from the Chair, in order to prohibit any discussion on it. I submit, Sir, that this may establish a sort of convention in the whole of India. I request that you may kindly agree to some Member or one of the Ministers moving this Resolution so that, if there is any Member who wants to improve upon the language or the idea or to oppose it, he may not be debarred from doing so. I submit that you may please reconsider your ruling or atleast announce that it will not go as a precedent in future.

The Honourable Shri Purushottam Das Tandon (United Provinces: General): Sir, I would rather have not spoken but duty compels me to say a word, though it may not be very pleasant. The procedure which is now proposed to be adopted to stifle discussion on a motion which is moved from the Chair. I submit, is one which is unheard of. Whatever knowledge of Parliamentary procedure that I possess, I submit with all the earnestness at my command that the Chair should only move a motion which is accepted by the whole House and that even if there is one man—I am not talking of two—who wants to move an amendment,—then the business of the Chair is to say immediately that it will not move such a motion but call upon some member to move it. If the Government of the day sponsor this motion, let them do so, but let not the Chair be a party to stifling discussion in the House on the ground that a proposition has been moved from the Chair.

The Honourable Shri Ghanshyam Singh Gupta (C.P. &Berar: General): Sir, I endorse every word of what Tandonji has said.

Shri M. Ananthasayanam Ayyangar (Madras : General): Sir, it is not a little surprising to find that such eminent men like Tandonji are opposed to such an innocuous Resolution and take exception to it.

The Honourable Shri Purushottam Das Tandon: I would accept the Motion but it is only the procedure that is proposed to be adopted which, I submit, is not acceptable.

Pandit Thakur Dass Bhargava : Some sixty lakhs of refugees are involved and all of them will be obliged to file a declaration and spend at least two rupees each.

Shri M. Ananthasayanam Ayyangar: Sir, after all what does the resolution want?

Honourable Members: No. no.

Shri M. Ananthasayanam Ayyangar: I will address myself only to the question of procedure. Sir, I am supporting the motion which has been moved by you.....

Honourable Members: No, no. Address yourself to the question of procedure.

Shri M. Ananthasayanam Ayyangar: On the Point of order raised, Sir, there is no point. Such resolutions have been moved from the Chair in the past.

So far as the Resolution itself is concerned, this is long overdue. This Resolution must have been moved much earlier. People outside want to know what is happening in this House. The dignity of the House and the dignity of the country requires that a Resolution of this kind should be moved. The sooner we pass it, the better for us.

Shri Algu Rai Shastri (United Provinces : General): I want to know, Sir, why the honourable Member himself does not move the resolution?

Mr. Vice-President : When I proposed to adopt a particular procedure, I thought I had practically the whole House behind me with the exception of one single honourable Member who had submitted two amendments. Now I find from what has happened just now that there is a sharp difference of opinion and that most Members—or at least many Members—feel that a proposition like this should not be moved from the Chair. I am after all a creature of the House. That I recognise. But honourable Members will admit that in everything which I have done I have always asked the permission of the House, and what is more, I have obtained it in every case. Here I admit, I made a wrong estimate of the feelings of the House. Probably, that is due to the fact that I am no longer in Constitution House. At any rate, the feeling is there. I therefore request some honourable Member to move this Resolution.

Pandit Lakshmi Kanta Maitra: You have formally to withdraw it.

Mr. Vice-President : It seems that before this can be done, I have to withdraw this Resolution formally. Have I to withdraw it formally?

Honourable Members : Yes, Sir.

Mr. Vice-President : All right, it is done with the permission of the House.

(Several honourable Members rose to speak.)

Mr. Vice-President : Pandit Nehru wants to speak. Pandit Nehru.

The Honourable Pandit Jawaharlal Nehru (United Provinces: General): Sir, I beg to move the following Resolution:

"Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the legislatures under the new Constitution may be held as early as possible in the year 1950.

Resolved further that the State electoral rolls be prepared on the basis of the provisions of the new Constitution already agreed to by this Assembly and in Accordance with the principles hereinafter mentioned, namely:—

(1) That no person shall be included in the electoral roll of any constituency—

(a) if he is not a citizen of India; or

(b) if he is of unsound mind and stands so declared by a competent court.

(2) That 1st January 1949 shall be the date with reference to which the age of the electors is to be determined.

(3) That a person shall not be qualified to be included in the electoral roll for any constituency unless he has resided in that constituency for a period of not less than 180 days in the year ending on the 31st March 1948. For the purposes of this paragraph, a person shall be deemed to be resident in any constituency if he ordinarily resides in that constituency or has a permanent place of residence therein.

(4) That, subject to the law of the appropriate legislature, a person who has migrated into a Province or Acceeding State on account of disturbances or fear of disturbances in his former place of residence shall be entitled to be included in the electoral roll of a constituency if he files a declaration of his intention to reside permanently in that constituency.

[The Honourable Pandit Jawaharlal Nehru]

I do not wish to say much about this Resolution except perhaps to clear a misapprehension.

A reference was made by some honourable Member to the Government perhaps putting forward this Resolution as a Government. Of course, Government as such has not moved this Resolution and Government as such is not functioning in this Assembly. This Resolution has come from the Steering Committee. It is the responsibility of the Steering Committee. That Committee felt that they were proposing a resolution which, in effect, embodied a matter which has been already decided by the House and there was nothing novel or fresh in it; therefore they ventured to suggest that the Honourable the Vice-President might move it from the Chair. Whether that is a fact or not, I do not think we need go into that. It never occurred to the Steering Committee that there was anything novel in this Resolution which might be objected to.

So far as the Government is concerned, the Government some time back took steps to ask the Provincial Governments to get electoral rolls prepared. As a matter of fact, even if this Resolution was not passed, the Government of course can proceed with the preparation of those rolls, but there will be this difficulty, that in the event of the Constituent Assembly at a later stage perhaps varying the qualifications or something, then all the electoral rolls that have been prepared or might be prepared might become useless. It was therefore desirable to have some indication of the wishes of the Constituent Assembly in this matter. In the last few days, this House has been considering the provisions in regard to elections. Having done that, therefore, this Resolution merely embodies them.

Then some honourable Member referred to the fact that only two qualifications, or disqualifications are mentioned in clause (1). What this Resolution says is that all that the Constituent Assembly has so far decided has to be taken into consideration. It is not considered necessary to say all that.

Then you will find in clause (3) a certain date given about residence—180 days in the year ending March 31st, 1948. That date was simply given there because some rolls have already been prepared on that basis and if this is not done they might become useless and one has to start afresh.

This is all I have to say, except to submit that in effect there is nothing new in this which the House has not decided. It may be there is some minor variation.

I heard—rather I think I heard—an objection that under clause (4) a large number of refugees and others might find it difficult to be enrolled. As a matter of fact, it is not intended to create any difficulty or any obstruction in the way, but surely some kind of intention has to be given; otherwise you cannot enrol everybody without knowing whether he wants to be here, whether he proposes to stay here, or not. It is for Provincial Governments to take steps to facilitate this process. Suppose a person who enrols has not even the intention to stay. Therefore, it is proposed here that some kind of intention should be declared of permanent residence. You will see that that clause was really meant to be in favour of the refugees because normally speaking you lay down some qualification of residence, etc., in a particular locality. Now, because many of the refugees who have come here may not be able to fulfil that qualification, therefore that clause was put in to facilitate their coming in. That clause, perhaps some people think, is an obstruction. That clause was put in because the residence clause does not apply to them. If the residence clause applies, then there is no difficulty. Since the residence clause does not apply,

in the case of recent comers, it becomes very difficult to enrol them unless there is some other fact to grip and that other fact to grip is that they declare their intention in future to reside. If there is no past and no future, the present slips away. One does not quite know whom to put in and whom not to put in. Therefore I submit that whatever is said in this Resolution not only flows from what the House has decided, but naturally flows from it, and with all respect I really do say that there is nothing in this Resolution which should raise any controversy. Sir, I move.

Shri Algu Rai Shastri: May I request you, Sir, to allow me to ask the Mover to explain one point? The citizenship clause still remains held up. How can there be any electoral roll, unless we have decided the fact as to who is a citizen of India and who is not ?

The Honourable Pandit Jawaharlal Nehru: These electoral rolls can be prepared and are going to be prepared. Whatever the future decision of the Assembly in regard to the citizenship clause might be it will only affect the preparation of those rolls slightly. The citizenship clause does not affect the vast number of people in this country. It affects only two types of persons ultimately, (1) persons who may be called "refugees" (2) Indians who reside outside India—which I say is more important. They are affected certainly. So far as the refugees are concerned, what I have just mentioned covers them, that is, we accept as citizens anybody who calls himself a citizen of India. But there is difficulty in respect of people residing outside India. Since that matter is to be decided by the Assembly later it is not a very difficult matter to arrange for them later on. They will come into the picture after we know what the decision of the Constituent Assembly is. It does not interfere with the work. Only a very small part of the work is delayed till you decide that. As soon as you decide that, effect will be given to it.

Mr. Vice-President : I suggest that honourable Members who need clarification had better put their questions, so that our premier may answer—only those who want clarification.

Shri Mahavir Tyagi: What about amendments?

Mr. Vice-President : They will come later on. So long as it was moved by the Chair, no discussion was permissible, but now that the Resolution has been moved by an honourable Member of the House, there will be discussion—of course, it must be limited by the consideration of time.

Sardar Bhopinder Singh Man (East Punjab : Sikh): On a point of clarification. Though ordinarily 180 days have been prescribed in the matter of residence, it has been relaxed in the case of refugees in that they have merely to file a declaration of intention to reside permanently in the constituency I want clarification on this point, as to whom such a person should file his declaration of intention; and if he has to file that declaration before some District Magistrate, obviously it will be very expensive and cumbersome. I want that it should be least expensive, so that the very right which is sought to be given to the refugees will not be tampered with.

Shri H. V. Kamath : Mr. Vice-President,....

Shri Mahavir Tyagi: On a point of order: I wish to say that the procedure that you are adopting now is novel. To raise objections and to get the reply from the Mover every time means that the Mover of the Resolution will have so many speeches to make and will have to go on clarifying question. I suggest that the discussion should be held on the lines as it was done in the past.

Mr. Vice-President : An extraordinary procedure must be followed on extraordinary occasions.

Shri H. V. Kamath : I would like a little more light on this point which I raised a little while ago about disqualifications for voters that will be included

[Shri H. V. Kamath]

in the new rolls that we are undertaking. Clause (1) (b) of this motion refers to only one disqualification and that is if he be of unsound mind and stands so declared by a competent court. But, Sir, I may invite your attention and the attention of the House to article 67 (6), as well as article 149 (2) which this House has adopted already. I will read the relevant portion on either of these articles because they are identical. That portion which is relevant to our present purpose reads thus:

"Every citizen who is not less than 21 years of age and is not otherwise disqualified under this Constitution, or under any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, shall be entitled to be registered as a voter at such elections."

It may be argued that these disqualifications will be prescribed or laid down by Parliament later on. But, Sir, we have extracted or culled two disqualifications—one of non-residence and the other of unsoundness of mind.

Clause (1) and clause (3) of today's motion refer to two disqualifications; one is non-residence and the other is unsoundness of mind. I want to know why the other three disqualifications—that is, of crime, or corrupt or illegal practice—have been excluded from the list of disqualifications. I want to know whether a person who has been convicted for crime in the past, or of corrupt or illegal practice at previous elections, shall be qualified to be registered as a voter, or whether all criminals, all those who have been convicted of corrupt or illegal practices in the past—will start with a clean slate, and whether they will have a sort of *"prayashchit".* In honour of the new Constitution we are going to adopt, will they be declared free from all sin and crime and start with a *"Tabula rasa"*—a clean slate?

Another point for clarification is about citizenship. That has been referred to by my friend already and I too referred to it earlier . It would be a rather difficult position, in case this Assembly revises or changes or alters the article on citizenship . It will mean so much additional labour to the authorities concerned for changing the electoral rolls.

I will only say that I yield to none in my desire that the elections should be held very soon. I should have preferred that the elections should have been held even at the end of this year so that people may not have the impression that Government is trying to entrench itself in its present position. This contingency would never have arisen of bringing up this motion today by an extraordinary procedure.....

Mr. Vice-President : You wanted clarification. That is finished, I think.

Shri H. V. Kamath : ..... had the Assembly met in May and October last as we had planned to do. But unfortunately we did not meet and this is the consequence.

Mr. Vice-President : It is only waste of time. You wanted clarification and you have put your case.

Shri H. V. Kamath : I have done, Sir.

(At this stage Shri Algu Rai Shastri was proceeding to the mike.)

Mr. Vice-President : Please wait your turn. Mr. Chaudhari has been asked to speak: just one point for clarification and nothing else!

Shri Rohini Kumar Chaudhari : This morning through some strange coincidence my mind and my friend's mind have been working on the same lines. I wanted to refer to a very sound proposition and that was with reference to sub-paragraph (b) of clause (1) of the resolution. Sub-paragraph (b) says that no person shall be included in the electoral roll of any constituency "if he is of unsound mind and stands so declared by a competent court".

If this stands as it is Sir, then unless there is a declaration from a competent court, no one who is of unsound mind can be excluded from the electoral roll. This is giving a great privilege to people of unsound minds. We generally know that in every village and town such and such a man is insane. We know it very well. But if this Resolution is given effect to as it stands, then those people of unsound mind who have not been so declared by a competent court will be entitled to have their names included in the electoral roll. I hope the honourable Mover of the resolution will take notice of this fact that it is very difficult and it is a very lengthy process to have a person declared as a man of unsound mind. We have to approach the Judge of our district and then make an application for the appointment of a Curator as well as for a declaration that a particular person is of unsound mind. That process takes a long time, and if we start today to exclude persons of unsound mind from the electoral roll, we must start a civil suit immediately. In the absence of such a declaration these people can go into the electoral roll, and they will go into the roll. That is the position if this Resolution is given effect to. Otherwise, we have found that people of unsound minds are to be excluded. There is no such qualification: there is no such rider.....

Mr. Vice-President : The honourable Member is indulging in a general discussion. I think he wanted clarification!

Shri Rohini Kumar Chaudhari: That is the clarification—whether by this sub-paragraph you want that all persons of unsound mind should be included in the electoral roll unless they are so declared by competent court.

In the other portions of this Constitution we find that the word is not qualified in this way. There it says "persons of unsound mind". Here it is something more. It is not only that he is of "unsound mind" but he must be declared so by a competent court.

Then, Sir, in the last two lines of clause (4), it is said that such person shall be entitled to be included in the electoral roll of a constituency, if he files a declaration of his intention to reside permanently in that constituency. I do not see why we should have the word 'permanently'. As we all know, the refugees are generally located in refugee camps, and they are transferred from one place to another and no refugee, whatever his intentions may be, can say today that he is going to reside permanently in a particular place. Therefore, I would submit that the word 'permanently' should be dropped from this Resolution. Otherwise, there will be a great limitation placed on the refugees and no refugee, if he is honest, will be in a position to make a declaration nor would he be entitled to inclusion in the electoral roll.

Then, Sir, I was asking another question and that is, that we have not discussed the citizenship right as yet. May we take it that the word 'citizen' may be interpreted, as we understand it, in the usual way or whether there is any technical meaning attached to it? I may remind the House, atleast those Members who are my contemporaries, that there was a text book called 'The Citizen of India' by Lee Warner in the Entrance course; and may we follow the definition as laid down there, or in the absence of any definition in the new Constitution, may we follow the ordinary definition?

There is one other point, Sir, and I particularly refer to the use of the words: '31st March 1948'. By this is meant 180 days preceding the 31st March 1948. I think, if we calculate in this manner, most of the members of the Central Assembly will be disenfranchised, because we are sitting here for long since January 1948.

Shri Algu Rai Shastri *[Mr. Vice-President, I submit that in the Resolution moved by Honourable Pandit Jawaharlal Nehru there is no provision for the

* [ ] Translation of Hindustani speech.

[Shri Algu Rai Shastri]

delimitation of the constituencies. I do not see how preparation of electoral rolls can be taken in hand until and unless a decision about the delimitation of constituencies has been taken and arrangements have been made to put it into practice. The rule is that the names of voters are entered in the electoral rolls according to the constituency to which they belong. One fails to understand how, unless the constituencies are delimited, the electoral roll can be prepared or it is plain that it would not be possible to say in which place a person is to be registered as a voter. It appears to me that in the matter of preparing the electoral rolls we are going to act as if it was merely the taking of a census, but I am afraid that this process would not enable us to prepare the electoral rolls of each particular constituency. If this assumption of mine is correct I believe all the labour spent on it would have been simply wasted.

While the anxiety to hold elections at an early date is understandable,— and we and the whole House are with you in this matter and as a matter of fact this Resolution has been moved with that object only—it is also necessary to keep in view the fact that the electoral rolls cannot be prepared correctly on account of the constituencies not having been delimited so far. I am afraid that even if their preparation is taken in hand at this stage the rolls so prepared may be found to be entirely useless and prohibitively expensive.

It is true that the question relating to citizenship. That had been raised by me, has been answered to a certain extent by Pandit Jawaharlal Nehru. But I submit, Sir, that even if a few people only are likely to be adversely affected, it is desirable that ample provision may be made so that not even a single person entitled to be a voter may be deprived of his voting right. I cannot lay too much emphasis on it, for it is evident that this is the most valued right of a voter and one which he must be given the opportunity to exercise. It is my submission, Sir, that there should be some provision so as to avoid the least possibility of even a single person otherwise entitled to be a voter, losing his right of vote. I am afraid that the difficulties arising as a result of the question of citizenship have not been fully removed as yet. I suggest that some words should be added in this Resolution which would clearly define as to who would have the right of vote. Moreover, when the electoral constituencies are delimited, it would be quite easy to prepare the electoral rolls for such constituencies. I submit, therefore, that the questions of citizenship and the delimitation of constituencies should be solved before the preparation of electoral rolls is taken in hand. I have great doubt that the object with which this Resolution has been placed before this House would be realised, unless these two questions are first solved. I, therefore, press my suggestion that more light should be thrown on these matters. I may add that citizenship and delimitation of constituencies are the keystones of any scheme of electoral rolls and as such an electoral roll cannot be prepared unless these have been properly defined. In any case, if it be said that even without them electoral rolls can be prepared, I would like to know how that miracle can be performed. This at least needs more clarification than what has been given as yet.]

Shri Deshbandhu Gupta (Delhi): Mr. Vice-President, Sir, the point of order that I want to raise is this: The second part of the resolution reads like this. It says that the electoral roll should be prepared on the basis of the provisions of the new Constitution already agreed to by the Assembly, whereas article 149, which deals with adult suffrage etc. and all the other provisions, has not yet been agreed to by this Assembly. So I suggest that until article 149 is passed, this Resolution cannot be taken up; otherwise it will be putting the House in a very awkward position.

Shri Mahavir Tyagi: Sir, may I move my amendment?

Mr. Vice-President : I rule that first of all the points raised for clarification by honourable Members would be answered by Pandit Nehru, and after that we will decide as to what should be done.

The Honourable Pandit Jawaharlal Nehru: Sir, I am very reluctant to appear again and again and speak repeatedly, and my only desire is to clear up any misunderstandings which may exist. In fact, I had no intention of moving this Resolution at all. This is not in any sense an official Resolution. I thought there was some misunderstanding about the Government coming into the picture, and you desired that somebody should move it. Two or three points that have been raised, if I may say so, are due to some misunderstanding, because I really do not myself grasp the significance of those points. For instance, one of the points raised by Mr. Kamath is that only two disqualifications are mentioned and not others. If you will see the Resolution, it says: "....the State electoral rolls be prepared on the basis of the provisions of the new Constitution..... agreed to by this Assembly.....". That is one thing and the other is "in accordance with the principles". That is all those mentioned in the Constitution are there; it is in addition to that something that is further mentioned. There are two things: if he is not a citizen of India and if he is of unsound mind. I will confess to the House frankly that saying that "if he is not a citizen of India" is rather unnecessary. I mean to say, it is a fact; the Constitution is based on that, and if it is left out, it makes no difference. It is really to round off, I may say, and it makes no difference.

There was another point raised by Mr. Rohini Kumar Chaudhari to which he seemed to attach importance and that is about the unsound mind.....

Shri H. V. Kamath : On a point of clarification, may I ask why.....

The Honourable Pandit Jawaharlal Nehru: It is impossible to continue. We cannot have clarification of every word and every sentence.

Honourable Members : Order, order.

The Honourable Pandit Jawaharlal Nehru : Am I in possession of the House or not?

Mr. Vice-President : (Addressing Mr. Kamath) You are always asking for clarification.

The Honourable Pandit Jawaharlal Nehru: May I submit there should be a limit to the points of clarification that a certain honourable Member raises in ten minutes.

Shri H. V. Kamath : It is for the Chair to decide.

The Honourable Pandit Jawaharlal Nehru: I am asking the Chair. On a plea of clarification, explanation, the time of the House that is taken is extra-ordinary; I think it is really misusing the time of the House.

Shri H. V. Kamath : That may be Pandit Nehru's view, but you, Sir, must judge.

The Honourable Pandit Jawaharlal Nehru: I submit, Sir, that as regards Mr. Chaudhari's point, about the unsound mind, what the Assembly has passed is certain disqualifications, which include 'any law made by the legislature ..... relating to non-residence, unsoundness of mind, crime or corrupt or illegal practice etc.'. Now, it is obvious that an unsound man is normally considered unfit to exercise this privilege. But, who is to determine it? The law. When the law is made, well and good. At the present moment we have no such law. What is stated here is this. If a competent court says so, that must be accepted. I do not quite follow Mr. Chaudhari's argument; it is not easy to hear from this side what a person says from the other side. From what I gather, is every

[The Honourable Pandit Jawaharlal Nehru]

person to go to a court for a declaration that a man is of unsound mind? I do not understand why anybody should go there at all. A few persons of unsound mind may get into the rolls. But, many persons of unsound mind who are not declared to be of unsound mind come in and not only vote, but do many other functions too. We cannot simply help it. What we want to guard against is this. A person should not be ruled out on account of some prejudice or wrong decision. There must be some guide to the enumerator. The decision of a court surely must be recognised by the man who has to prepare the electoral roll. For the rest, if a further law is passed by the Constituent Assembly, I should think that would be good. But, it is quite impossible not to accept the decision of a court. It is not necessary, I submit, for you at this stage to say, 'subject to any other rule that may be made.' If this House passes any other rules, the enumerator will follow them. This is a preliminary electoral roll. You cannot go into too great specifications and details. These rolls will, no doubt, be checked later or in accordance with the rules and laws passed by this Assembly or by the provincial Assemblies as the case may be. But, in the first instance, too many details cannot be gone into. You must remember that the man who is going to prepare them is an ordinary type of enumerator and he will have to go by his own lights which may not be very great. Afterwards, they would be checked by the other people concerned. So that, first of all, the disqualifications mentioned in the Constitution as it is being passed will, of course, be given effect to. If you like, you may leave out, "If he is not a citizen of India", because it is redundant. But, the second thing is desirable, because, there is no test of unsoundness. There may be a closer test. Anyhow, this is a wide enough test: that if a competent court declares a man to be of unsound mind, we may accept that. If the court does not say so, we may accept that he is sound or unsound. If we pass any further rules, they will be followed.

An honourable Member asked as to where the declaration as to intention to reside is to be filed. Obviously, before the registering authority. He has not to go to any court. He may declare before the enumerator who puts down his name. The fact is that we should try to make this as simple and as easy as possible for the party concerned. The earliest way is for the enumerator to be informed.

One point was raised by Mr. Chaudhari, about people in the refugee camps. It is a very valid point. I think some special provision should be made to permit them to vote. For the moment, suddenly, I cannot say what it should be. But, I entirely agree that that is a valid point and special provision should be made. In fact, it was intended that they should vote. Nobody is going to reside permanently in a refugee camp. *(Interruption).*

Mr. Vice-President : We cannot permit any more interruptions.

The Honourable Pandit Jawaharlal Nehru: There is one important matter which might perhaps give rise to some misapprehension. In clause (4) it is said. "subject to the law of the appropriate legislature, a person who has migrated into a province, etc., etc.,". The words "subject to the law of the appropriate legislature" might create doubts and confusion. I should like, subject to the permission of the House, and you, Sir, permitting me to do so, to delete these words, "subject to the law of the appropriate legislature" and to say thus: "That Notwithstanding anything in clause (3), a person who has migrated into a province etc.". It was the object of clause (4), that the residential qualification in clause (3) should not apply to the refugees. I think, the clause should read: "(4) That, notwithstanding anything in clause (3), a person who has

migrated into a Province or Acceding State etc., etc." I think this makes it clear.

Shri R. K. Sidhwa: The word "permanently" in clause (4), line 6 may be removed.

The Honourable Pandit Jawaharlal Nehru: Intention to reside for six weeks or two weeks would not be enough. I can assure the House that this resolution is in the nature of a directive. I would request the House to consider that this is not part of the Constitution. It is not a statute. The words need not be precisely looked upon from the point of view of a statute. These are general directions given to the Government which they will transmit to the enumerators, etc. As I said, even without this resolution, the Government can take those steps, of course subject to this House later on laying down any fresh qualifications, which might upset the rolls already prepared. I entirely agree that this question of camps should not come in the way of persons voting. But, if you leave out the word "permanently" then you make it too loose. Any person can say, 'I intend to reside here', meaning thereby that he intends to reside there for the next two weeks. That would make a farce of the whole thing. The idea is, nobody can guarantee what he is going to do for the rest of his life; but the intention should be more or less to reside permanently in that area.

Shri Bikramlal Sondhi (East Punjab: General): It may be stated, "to reside permanently in the Indian Union". He may go from one camp to another.

The Honourable Pandit Jawaharlal Nehru: Those in the camps should be specially dealt with. I can give an assurance to the House that this residential clause will not come in their way.

Shri Bikramlal Sondhi: What is the harm in removing the word "permanently"?

The Honourable Pandit Jawaharlal Nehru: You may leave out the word "permanently" from the point of view of the men in the camps; that does not apply to them. A way will have to be found out for them. If you leave out the word "permanently" in the case of those are elsewhere, not in the camps, vague migrants also may come in. That is a clause in favour of the refugees.

Shri Bikramlal Sondhi: Will any stamp be required for this declaration?

The Honourable Pandit Jawaharlal Nehru: The House will have to decide that. We want to facilitate this process and not to make it difficult by requiring stamps, etc. So far as I can say straight off, I do not think any stamp will be necessary. I do not see why that is necessary.

Shri Bikramlal Sondhi: Provincial Governments require this declaration on stamp paper.

The Honourable Pandit Jawaharlal Nehru: No stamps are necessary. To facilitate this, we shall inform the provincial Governments that this will be free.

Shri S. Nagappa (Madras: General): Most of our people are illiterate; it would be better if the declaration is allowed to be oral. (*Interruption*).

The Honourable Pandit Jawaharlal Nehru: I am sure the House wants that this process should be facilitated and obstructions should not be put in the way in the nature of stamps, fees etc. We propose to issue such directions to the provincial Governments. It is difficult to go into the details at this moment. I understand that instructions have been issued that there should be no fees or stamps for this.

Pandit Lakshmi Kanta Maitra: The word "constituency" should be deleted. We have not yet delimited constituencies. Nobody knows what will be his constituency.

The Honourable Pandit Jawaharlal Nehru: I am prepared to accept the word "area" for the word "constituency".

One word more about the introduction of the word 'unsound mind'. That was taken from the present Government of India Act that is functioning now. In the Sixth Schedule of the Government of India Act it says—

"No person shall be included in the electoral rolls for, or vote at any election in, any territorial constituency, if he is of unsound mind stands so declared by a competent Court".

Shri Mahavir Tyagi: Sir, may I move my amendments?

Mr. Vice-President : Why are you so impatient? Have you no faith in the Chair?

Shri Mahavir Tyagi: I have no faith in the procedure that is being followed.

Mr. Vice-President: You have no right to question the procedure once the ruling has been given.

Shri H. J. Khandekar (C. P. & Berar : General): This House has a right to question you, Sir.

Mr. Vice-President : The rules, which you are found of quoting, will tell you that you are wrong.

I understand Pandit Nehru will have to be away and the amendments which I have received will be allowed to be move done after another and I understand there is the Chairman of the Drafting Committee who will reply to them. Now I want to ask Shri Rohini Kumar Chaudhari whether in view of the explanation already given by Pandit Nehru, he still wishes to move the second part which deals with sub-para. (4).

Shri Rohini Kumar Chaudhari: Sir, I want more clarification.

Mr. Vice-President : Please come to the mike. Now that the discussions have started and amendments have been received, I cannot permit further amendments to be submitted. Mr. Chaudhari.

Shri Rohini Kumar Chaudhari: Mr. Vice-President, Sir, I beg to move:

The Honourable Dr. B. R. Ambedkar (Bombay : General): If the Honourable Members will not speak loudly, it is very difficult for me to catch anything of what they say.

Shri Rohini Kumar Chaudhari: Sir, I beg to move:

"That in sub-section (b) of the Resolution the words 'and stands so declared by competent Court' be deleted".

Sir, we have gone through many elections and we have been that in the previous electoral rolls and in previous constitutions, and even in the Draft Constitution which we are considering in this House, the word 'unsound mind' has nowhere been qualified by the words which have appeared in this Resolution, and to which I have taken exception. As honourable Members of the House are aware, there is a fairly large number of people of unsound mind who are unfortunately not cared for by their brethren in India. We see some of them—at least the male portion of them who are roaming about freely and causing disturbance to themselves and their relations. But there are so many others particularly amongst the females of whom we do not know at all and I am told that there is a larger percentage of people of unsound mind among the females. Ninety nine per cent of these have not been so declared by any competent court but anyone who is in charge of the preparation of electoral rolls knows very well that these people are of unsound mind but nobody will take care to go to any court and have a declaration made for them.

Mr. Vice-President : You are repeating the arguments which you put forward before the House once. I would appeal to you to take as little time as possible. As the House is aware we are going to disperse today. The House is equally aware that we must at least get through article 149. May I appeal once again that if there is anything new you may bring forward but not repeat the old arguments?

Shri Rohini Kumar Chaudhari : If I am allowed to speak I will finish it more quickly. What I wish to say is the procedure which has been followed hitherto is quite correct because if you put a Patwari or anybody else as in charge of the work of preparing the electoral rolls, he will exclude anybody whom he knows to be of unsound mind. So this qualification ought to be deleted. Nowhere have I found this qualification made. So I say this ought to be deleted and no difficulty will be created by deletion of that because if anybody is aggrieved that he has been unlawfully excluded, he can go upto the higher authorities and the returning officer will consider all those cases. If you do not exclude them, then all the unsound people will go into the electoral rolls.

My second amendment is :

"That in sub-paragraph (4) the word 'permanently' occurring in line 6 be deleted."

Now, if I give an instance, I think the honourable Members will be convinced about the reasonableness of my amendment. I have heard that there are about 50,000 refugees—Sindhi refugees in Bombay—and they are going to be transferred to Bengal or Assam. Now these people have been in Bombay so long and they make a declaration that they wish to stay permanently in Bombay. They would like to be near my Friend Mr. Sidhwa. By the time the electoral rolls are prepared they may be transferred to Assam. Then what is the use of having all those people entered in the Bombay electoral rolls? Similarly, if they come to Assam before the election and they cannot be included there because the electoral rolls for Assam will have been prepared before and the time for declaration will have been past, what is the use of having this sub-para unless you remove the word 'permanently' from this sub-para? Therefore, in the case of a refugee who has no such intention, or at any rate whose intention does not mean anything so far as elections are concerned, if you retain the word "permanently" in this clause, you will practically be depriving him of the franchise. Therefore, I request that this word be removed.

Mr. Vice-President : I have to inform the House that unless we make satisfactory progress, we shall have to sit again in the afternoon today, in order to get through at least article 149, and probably tomorrow also. (*Interruption*). I am in the hands of the House. It was not I who created any difficulty probably the House will admit that.

Shri K. Hanumanthaiya (Mysore): Sir, I wish to move an amendment to the effect that the words "in the year 1950" occurring at the end of the first para…… be deleted. The effect will be that the sentence will end thus—

".....that elections to the Legislatures under the new Constitution may be held as early as possible."

My intention in moving this amendment is that whatever we say or whatever we do must be quite accurate. Sir, this is not the first time that we have declared it to be our intention that the elections should be held as early as possible; it was declared in this very Assembly that the elections should be held in 1948.

[Shri K. Hanumanthaiya]

If we go on repeating dates which it is almost impossible to keep, to that extent this House would get a kind of odium at the hands of the People. Therefore it is better to state our declaration to hold the elections as early as possible. It may not be possible to hold the elections in 1950, or it may be possible to hold them earlier. We are going to work this adult franchise for the first time and we do not know how long it will take us to prepare the electoral rolls and divide the country into proper constituencies and things of an allied nature. Therefore, in order to be more accurate in our resolutions, I would urge on this House not to put down any specific date, but to say that .....

Shri L. Krishnaswami Bharathi (Madras : General): There is no specific date laid down.

Shri K. Hanumanthaiya: By date, I mean the year 1950. It may not be possible to hold the elections in 1950, and previously we have found that we could not stick to the year we had proposed. Our Prime Minister once said that elections should be held in 1948, and it has not been possible to have them in 1948. I do not want the words of the Prime Minister or of this House to be treated in that fashion. We must be more serious about what we say. Therefore, I suggest that the phraseology may be slightly changed and we may say that the elections should be held as early as possible, in order to be truthful to ourselves and to the people.

Shri Mahavir Tyagi: Sir, I beg to move:

"That all the words occurring after the words 'This Assembly' in the first paragraph, be deleted."

If this amendment of mine is accepted, then there solution would read:—

"Resolved that instructions be issued forthwith to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the legislatures under the new Constitution may be held as early as possible in the year 1950.

Resolved further that the State electoral rolls be prepared on the basis of the provisions of the new Constitution already agreed to by this Assembly."

That is what I want this Resolution to be.

In moving this amendment, I want to submit that from the beginning to end, the language of this Resolution has been very unfortunate and unhappy. In the first place, we must all be conscious of the fact that there is a distinction between our resolutions and the articles of the Constitution. We are a sovereign Body, no doubt, but the words uttered here and the resolutions passed here do not carry the same value or weight before the eye of the law as the regular articles of the Constitution. We must pass a Bill or Constitution. The resolution has no legal value and the legality of an action done through this Resolution may be questioned, especially in the matter of constitution-making.

Pandit Balkrishna Sharma (United Provinces : General): What does the honourable Member think about the Objectives Resolution that was passed in this House?

Shri Mahavir Tyagi : It was an Objectives Resolution only, and it has no legal value. The value lies in this book and nowhere else.

Mr. Vice-President : You will please keep to your point; in that way, we may be able to avoid an afternoon session. A veteran speaker like you should not be disturbed by such interruptions.

Shri Mahavir Tyagi: Thank you, Sir. What I say is that the Government cannot act without a definite article in the Constitution. Every authority issues and comes out from one or the other of the articles of the Constitution and not from a Resolution. This Resolution only expresses the wish of the House that we do not want to delay democracy from going down to the people.

Pandit Balkrishna Sharma: What about the directive?

Shri Mahavir Tyagi: I do not want to be disturbed. *(Laughter).* Democracy or freedom has come only up to the Constituent Assembly, it has not yet filtered down to the masses, and it will do so only when the villager exercises his freedom and goes to the booth to cast his vote. Therefore we are in a hurry to see that this freedom goes down to him. The electoral rolls should be got ready soon. The Constituent Assembly is anxious that the elections should take place as early as possible. The Resolution, however, says that "the State electoral rolls be prepared on the basis of provisions of the new Constitution *already* agreed to by this Assembly". That means, agreed to upto the time of the passing of this Resolution, and the most important part has to be agreed to in the afternoon session and not now. Up till now, we have only half done it.

Mr. Vice-President : May I suggest that the Resolution will bear not the time, but the date?

Shri Mahavir Tyagi: That is good, so that evening may also be included in the morning.

Well, Sir, as I said, this is merely an expression of our desire that we are anxious to issue instructions to the provincial Governments so that they may be ready with whatever preliminary work needs to be done in connection with the preparation of the electoral rolls. The electoral rolls will not be ready and cannot be prepared by an authorisation of the kind which the Resolution seeks to do. The orders of Government are necessary for that. This Resolution is therefore an innocent one. It only gives the provincial governments and the Central Government the authority of the Constituent Assembly to go ahead with the preliminary work necessary for the preparation of the electoral rolls. Hence, without going into details, if we limit the scope of the Resolution to the necessities of the case, we require only the first two paragraphs of it. Only when we attempt to go into details, difficulties arise. For instance, as my friend stated, the citizenship clause has not been adopted. Even if we sit till midnight, it cannot be done. Under this Resolution, the authorities can prepare village or mohalla electoral rolls without naming as of this or that constituency. The constituencies can be delimited only later on. The electoral lists now prepared will help also the delimitation of the constituencies later on. The rolls thus prepared will be preliminary to the real work that lies ahead. The spirit of the Resolution cannot be found fault with. It only informs the country that we are anxious to start the elections. Let us not go into details at this stage. To depend on these incomplete and ineffective details will be something like "driving a peg in the sky and hanging our hopes on it". *(Interruption.)* Sir, I am inclined to yield to this interruption.

Shri H. J. Khandekar: May I ask for information what value will this Resolution have when we have not passed article 292 which deals with the minority question, reservation for the minorities, and so on?

Shri Mahavir Tyagi : The question of minorities does not arise at all. This Resolution will only enable the Governments concerned to prepare the list of adults everywhere.

Shri H. J. Khandekar : The seats are reserved for the minorities on population basis and if the voters lists are complete without census how can you distribute the seats for minorities on population basis?

Shri Mahavir Tyagi : This difficulty will not arise at this stage. I know there has been no delimitation of constituencies. Only the work of collecting the names of all adults in the villages and towns is meant by this Resolution. These registers of electors will be attached to various constituencies as soon as they are described and delimited.

Shri H. J. Khandekar : Sir, the Honourable Shri Tyagi has not followed me.

Mr. Vice-President : I am afraid I cannot permit this discussion. Mr. Khandekar may read out those points in the course of his speech.

Shri Mahavir Tyagi : I am submitting, Sir, that the preparation of the list of adults does not come either in the way of reservation or delimitation of constituencies. This Resolution only enables the Government to prepare sort of general list of all adults resident in different localities.Therefore it is a very innocent Resolution and may be adopted as amended by my amendment. With these few words I support the proposition, subject to my amendment.

Mr. Vice-President : Prof. Shibban Lal Saksena may now move the amendment. I can allow him only five minutes.

Prof. Shibban Lal Saksena (United Provinces : General): Mr. Vice-President, I beg to move:

> "That (1) for '1st January 1949', the words '1st January 1950' be substituted:
> (2) for 'constituency' wherever it occurs in this Resolution, the word 'area' be substituted;
> (3) for 'file a declaration of', substitute 'signifies';
> (4) the word 'permanently' be deleted."

I should like to say, Sir.....

Mr. Vice-President : I should like to suggest that you leave out the word 'Permanently' as it has been dealt with by another Member.

Prof. Shibban Lal Saksena: Sir, we have fixed January 1st 1949 as the date with reference to which the age of the electors is to be determined. We have stated that the elections shall be held in 1950. They may be held as late as December 1950. Therefore if we adopt the date proposed for the age, we will be excluding all those men who would become qualified to vote on 1st January 1950. I feel that we should not disenfranchise a large number of persons in this way. About a crore of persons who will be 20 Years of age on 1st January 1949 will become 21 Years of age on 1st January 1950, and we should not disenfranchise these people for the first election.

Then, I agree with Mr. Tyagi that this Resolution is not a direction to the Governments. We cannot override the provisions of the Constitution which we have passed. We have not passed as yet the provisions relating to delimitation of constituencies. So at present we should say 'areas'. We can prepare the rolls for areas and afterwards, when we have passed the Constitution, we can group these areas together into constituencies. At present we should use the word 'area' instead of 'constituency'. That will be much more helpful and also accurate. When the constituencies are not there you cannot frame the rolls for them. But you can enrol voters in each area. The difficulty is greater for the minorities. Seats may be reserved for them and if they do not know what the constituencies are in which such seats have been reserved for them, it will not be very helpful to them. By merely passing a Resolution of this kind we cannot form constituencies. I therefore think that the word 'area' should be substituted for 'constituency'.

Then I come to the filing of declarations. Many of our refugee friends are not literate and may have to seek the aid of petition writers to make and file applications. That means money and expense to them. I think that the man who seeks to vote in any area should simply say: "I want to reside in this area". That should be enough to qualify him for the vote.

There should not be any filing of applications. Merely signifying the intention to reside should be enough. I do not think there should be any difficult procedure for this purpose. If you ask a villager who is not a literate person to file an application like this, other people will exploit him and make money. That is why I say that mere signifying one's intention to reside in the constituency should be enough for his enrolment.

Then, Sir, the word 'already' is there. We have not passed article 149, and so the word 'already' is not strictly opposite. Therefore it should be removed.

There is another point which Mr. Tyagi raised that this Resolution of ours cannot have any legal force. I think there is much to be said about that. What we have passed in article 67, clause (6), is that "The election to the House of the People shall be on the basis of adult suffrage; that is to say, every citizen who is not less than twenty-one years of age and is not otherwise disqualified under this Constitution or under any Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice shall be entitled to be registered as a voter at such elections." Now, Sir, we are not constituted as the Parliament and therefore this Resolution has no right to say that only such and such men will be included in the rolls and not others. I think this resolution is only a sort of direction. As such, it will have no legal effect, unless an Act is passed that men who are of unsound mind or who have committed crime shall not be voters. I think this should be properly studied by Dr. Ambedkar, so that we may not be faced with any difficulty over this.

With these words, I commend this amendment to the House.

Pandit Thakur Dass Bhargava : Mr. Vice-President, Sir it is very unfortunate that a Resolution of this kind should be debated so hastily in this House. I got a copy of the resolution only at about eight in the morning today and when I came here, I tabled amendments on which I want to speak. But I have now found many more difficult problems in this Resolution and I would beg of you kindly to permit me to speak when the resolution is being discussed or permit me now to give in detail all my objections on this subject. If you permit me to speak on the whole Resolution now, I will finish my speech now.

Mr. Vice-President : You can use your discretion.

Pandit Thakur Dass Bhargava : My submission is that the subject matter of this Resolution is one which as a matter of fact should have been contained in an Act of the legislature. In the first place, Sir, as has been pointed out by Mr. Tyagi, I doubt very much whether a resolution of this character will have any legal force in the sense that an Act will have. We have already passed article 67, clause (6). In clause (6) we have laid down that the disqualifications for electors must be either under this Constitution or under an Act of Parliament on the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice. So far as the question of disqualification on the basis of non-residence is concerned, I am afraid that paragraphs (3) and (4) of this resolution trespass on sacred ground which ought to be covered only by an Act of Parliament. We cannot by a resolution say that a person should declare

[Pandit Thakur Dass Bhargava]

his intention to live in a constituency to be included in the electoral roll of that constituency. That has no binding force.

Similarly in regard to persons of unsound mind. I find that if this Resolution is given effect to, those persons of unsound mind who have already been so declared by a competent court will not be included, but those persons of unsound mind who have not been declared will have to be included. The Act of Parliament contemplated in article 67, clause (6), may be passed in 1950 or 1949. We are anticipating that Act. How can you fix by a mere resolution the date 1st January 1949 or say "unless he has resided in that constituency for a period of not less than 180 days in the year ending on the 31st March 1948"? My submission is that only an Act of Parliament can fix such dates. A resolution cannot fix those dates.

Similarly, the present law about naturalisation and citizenship is in force. We cannot by a resolution do away with those laws. Those Acts, have got the force of laws and a mere resolution cannot do away with them. My submission is that this Resolution is against the present law and the principles contained in article 67, clause (6).

Apart from this, Sir, unless you pass the citizenship clause, you cannot have an electoral roll of citizens. When the constituencies have not been delimited, I doubt very much if the words "resided in that constituency" have got any meaning. After all, till the constituencies are delimited, we cannot know whether a person will reside in this constituency or that constituency. Now the population basis is seventy-five thousand and it will be very difficult to find out, when the electoral rolls are being prepared, whether a person lives in constituency A or constituency B. My submission is that everything in this Resolution seems to put the cart before the horse, because the constituencies have not been defined so far, the citizenship clause has not been passed. It may be said that by way of preparation some kind of register may be prepared, but the word used is 'electoral roll'. Then, if it is to be prepared, it does not require any resolution. I understand that since the last eight months this preparation is going on. Are the electoral rolls already prepared illegal? If they are not illegal, this Resolution is unnecessary, and if they are illegal, they cannot be made legal by passing this Resolution. My submission is that it would have been better if we had not brought forward this Resolution which has got no binding force as compared with the law in the form of an Act of Parliament.

Now, Sir, with regard to the particular amendments that I have submitted for your consideration, the words in sub-clause (4) are: "file a declaration of his intention". We have just been told by the Honourable the Prime Minister that when the enumerator—by that I take it we mean the person who is in charge of the preparation of the electoral roll—goes to a village, he should obtain a declaration from those refugees. Now, Sir, I want this Resolution to make two things clear. Number one is that no stamp will be charged from them. Number two is this. The person in charge of the preparation of electoral rolls should go to the villages and get the declarations there. Now a mere declaration by howsoever a prominent or high authority will not be enough. After all, it will be the provincial governments who will have to do this job. They may not be able to send patwaris or enumerators who are in charge of these rolls to each village and it may be that these refugees may have to spend Rs. 2 each and come to the headquarters and get the declaration made. They are illiterate people. They will be put to all sorts of untold sufferings. Many of the members of this House are fully aware that if such kind of declaration is to be filed, it may be that many people may extort some sort of illegal gratification from these people and only allow them to put the declarations and become voters if those persons are paid something. These difficulties have

to be encountered. My submission is, if you want to have a rule of this kind, you must see that all kinds of facilities are extended to the refugees either by executive order or by embodying them in this Resolution, so that there will be no difficulty in regard to these refugees. These refugees are a sort of special charge of the Government of India and all kinds of facilities must be given to them.

Now, Sir, I have given notice of another amendment also, relating to the date, 31st March 1948. My humble submission is that this Resolution is not competent to fix this date, but if any date is to be fixed, I would humbly, suggest that the date may be the same as in clause (2). 1st January 1949 or 31st March 1949 may be the date so that the right of a citizen who is a citizen up till today, up till 31st March 1949 or up till 1st January 1949 may not be taken away. There is no reason why, so far as he is concerned, the question of residence should come in his way. My submission is that this date may be the same, or it may probably be 31st March 1949 because I do not think that before March 1949 the orders or the subject matter of this Resolution will be put into effect, and until this is effected, we should put the date as late as possible. There is no sense in putting this date 31st March 1948 so as to exclude many people or to put obstacles in the way of many people. My submission in regard to both these amendments is that they may be accepted by the House.

Mr. Vice-President : There is an amendment in the name of Mr. Nagappa. In view of the explanation already offered by Pandit Nehru, does he still insist on moving his amendment?

Shri S. Nagappa: Yes, Sir. I beg to move the amendment that stands in my name, namely:

"That in paragraph (4) the following words occurring after the word 'constituency' in the last but one line, namely,

'if he files a declaration of his intention to reside permanently in that constituency' be deleted."

My reasons are these. We know that in our country only 10 or 12 per cent are literates. Now, "filing a declaration" means what? If it is "making" a declaration, it is a different thing. Supposing an officer goes to a person, if he records the declaration made by the person, I can understand it. But filing a declaration means, it must be a declaration in writing. Now, I am glad that the honourable the Mover made it clear that one need not affix any stamp, but that does not take away the burden of filing a declaration in writing—writing it, getting it signed and filing it before the officer concerned. So my point is, if you want to delete, delete the whole clause. Otherwise, there is my alternative amendment. I would like to move it also with your kind permission, namely, to say "if he files or makes a declaration". If we put it that way both the literate and the illiterate people may have the chance of getting themselves enrolled as voters.

Mr. Vice-President : May I point out to the honourable Member that this has been already accepted by Dr. Ambedkar?

Shri S. Nagappa: If it is accepted, well and good. In that case, where is the necessity for me to move it, if you say you are accepting it?

The Honourable Dr. B. R. Ambedkar : I have heard the honourable Member and I have heard others also. I have understood all their arguments and I think a repetition of their arguments, so far as I am concerned, is quite unnecessary. I have understood them already.

Mr. Vice-President : The Resolution is now open for general discussion.

Seth Govind Das : *[Mr. Vice-President, Sir, I am not a lawyer nor do I intend splitting hairs. I would like only to say something regarding the objects and motives that lie behind the Motion which has been placed before us.

There are two kinds of Members in this House. One class consists of those who are also connected with the public life outside this Constituent Assembly and the other, I may be excused for saying so, consists of those who are connected only with this Assembly. I am prepared to accept that the electoral rolls of the present and prospective voters are being prepared. I concede that even without this Motion there would have been no hindrance in that work. But at the same time I would like to say that, in spite of the preparation of the electoral rolls, the slow progress of this Constituent Assembly in the completion of its work and the delay occurring in the framing of our Constitution are such as have given birth to different kinds of misconceptions about us in the minds of the people. I have got some connection with the public life outside this House and I therefore know what is being said outside. Some people say that those who are Members of this Constituent Assembly or of the Legislative Assembly as also those who are our Ministers in the Centre or in the provinces, are determined to stick to their places and to delay the elections as long as possible. Some people say that if we intend giving the right of vote to every citizen who is 21 years of age, elections cannot be held until the census of 1951 and a number of other preliminaries have been completed. Others hold that it would not be possible successfully to hold elections if these are to be held after the principle of adult franchise has been adopted. I would like to emphasise the fact that all such misconceptions and sentiments which are prevailing in the whole of the country would be totally removed by this Motion. By adopting this Motion we would be proving that we are not anxious to delay the elections. We also make it clear to the people that the elections are possible on the basis of adult franchise. I do not know why it is said that such an election cannot possibly be held. It is no doubt true that the country has a huge population, as also a very large area. But even though I accept that the country is large and that every person of 21 years will have the right of vote, I am not ready to accept the proposition that elections on that basis cannot be held here. The main argument advanced by some people in support of this proposition is that the number of voters would be so large, polling booths would be so many and the numbers of person required to control these booths would be so huge that it would simply be impossible to hold the elections successfully. I consider such fears to be entirely ridiculous. Even though all the citizens of this country are not literate, we can have able persons who can maintain orderly voting at these polling booths. If assessors can be summoned to sit in the law courts, such educated persons as are not government employees can be summoned to work at the polling booths. We should concentrate our view on the object and moves behind this Motion. We should not be splitting hairs. It is not desirable for us to give too much attention to the question of syntax—of the appropriateness of the colons, semi-colons and commas. This is a Motion and not a Bill or a draft legislation. The Government expresses only its intentions by means of such motions, and it is usually made in order to give assurance to the people. The Objects of this Motion is to give a message to the government and the public, or rather to give an assurance to the people that though we are here, yet we are not anxious to remain here for ever. Through this Motion we wish to make it clear that we believe in true democracy; we wish to express that even after granting franchise to all such countrymen of ours as are twenty-one years of age, we are determined to hold elections in 1950. This Motion has been brought before the House with these objects and sentiments and I support this Motion because I entirely agree with those objects and entertain the same

*[ ] Translation of Hindustani speech.

sentiment. I support the original Motion. After this Motion has been adopted all the apprehensions prevailing in the minds of the people of this country would be totally removed and a new hope would begin to fill their hearts. I would like to remind you of the days when the Constituent Assembly started functioning. The country appeared to be full of a new life, and people took great interest in the proceedings of the Constituent Assembly. But the work of the Assembly has gradually become so prolonged that people have begun forming funny ideas about it and have not much interest in the daily proceedings of the Assembly. By adopting this Motion it would be proved that we wish to hold elections in 1950, and we also make it clear that we want to frame the Constitution as early as possible and in this way we remove the apprehensions of the people. If we look therefore to the objects of the Motion and consider the motives lying behind it, we will have to agree that the acceptance of this Motion is quite necessary, if not for legal purposes, for the realisation of these objects and satisfaction of these sentiments. I support the motion.]

The Honourable Shri K. Santhanam (Madras : General) : Sir, I do not want to take up the time of the House to any considerable extent. The exact effect of this Resolution should be realized. I do not think it will have the same validity as the clauses of our Constitution. I think the effect will be something like a declaration on a provisional basis for preparation of electoral rolls. As soon as a Constitution has been formally brought into force, the electoral rolls prepared under these provisions will have to be duly ratified by the rules and the authorities under the new Constitution. All that it means is that the authorities which will have to do it will take note of the fact that this was passed by the Assembly and they will try to see that no changes are made, or only the most necessary changes are made in the electoral rolls prepared under these provisions.

Sir, I think the difference in the dates between clauses (2) and (3) are not only unnecessary but embarrassing. The Prime Minister explained that the date of 31st March 1948 in clause (3) is intended to conserve the electoral rolls that have already been prepared under the directions of the Government of India. That is a legitimate purpose, otherwise the whole electoral roll will have to be changed.

In clause (2), all people who attain the age of 21 years up to 1st January 1949 will have to be included. I shall just give an indication of the numbers involved. I think every year 10 million people attain the age of 21 years from the age of 20. The average age in India is 30. Therefore, in every age group, especially in the middle age groups, there will be 10 million people involved. Therefore, by putting 1st January 1949, in clause (2), we include atleast 75 per cent, of those 10 millions : that is, $7^1/_2$ million new voters will have to be brought into the registers already prepared. That means a complete overhaul of the electoral registers. Therefore, if we want preparation of new electoral rolls, we should adopt the suggestion of Pandit Thakur Dass Bhargava. Let us take 31st March 1949—that will have the merit of giving the franchise to people qualifying up-to-date. Otherwise if we want the maintenance of the old registers let us have 31st March 1948 in clause (2) also. We need not then add to the registers in any large numbers. Therefore, there should be some coordination between these two clauses.

In clause (4), there has been much argument about the word “permanently”. The intention was that the refugees should declare their intention to reside in India permanently, while they could reside in a particular constituency for some time. That is the intention. Even a citizen is not expected or required to reside in any constituency permanently. A citizen is required to reside only for a period of six months before a particular date. Therefore, I do not think that in the case of refugees some new and onerous condition is being put forward. All

[The Honourable Shri K. Santhanam]

that is meant is that he should declare his intention to reside in the constituency; but he should also declare his intention to reside in India permanently.

One more point, Sir, is—I think it is every more important than the preparation of electoral rolls—that the Delimitation Commission should be appointed as early as possible. It may be argued that the preparation of electoral rolls will have to precede the delimitation. I do not think it is correct because on the basis of adult franchise, delimitation has to be based on the population and not so much on the electoral rolls. Therefore, the two processes can proceed simultaneously and I do suggest to the Government of India that they should immediately appoint—if necessary from instructions from the President of the Constituent Assembly—a Delimitation Commission, so that the entire work of constituencies will be over by the end of this year, so that the final preparation of the electoral rolls and the appointment of other agencies for the elections can be proceeded with expeditiously.

There is also another consideration which requires the appointment of the Delimitation Commission as soon as possible. Even in the preparation of electoral rolls, the final printing and other matters will have to be taken up only constituency by constituency. Now, according to the provisions we have already adopted, every constituency must have approximately the same number of people. Therefore, unless the constituencies are delimited, we will not know the area for which the electoral rolls will have to be prepared. That means that the final preparation will have to wait for the delimitation of the constituencies. This should be proceeded with as soon as possible. Sir, I hope that these points will be considered by those who have to give effect to this Resolution. As I pointed out at the beginning, this Resolution is in the nature of provisional directions to the Government of India on behalf of the Constituent Assembly to prepare the spade work. The final directions will have to be given by the President or such authority as will come into existence after August 15th next, if fortunately we are able to put the Constitution into force by that date.

Mr. Mohamed Ismail Sahib (Madras : Muslim): Mr. Vice-President, Sir, it is true that preparations for elections and carrying on of the elections have been delayed. Much as we may regret this delay, I do not think that a resolution of this sort will in any way be a proper compensation for this delay. As I see this Resolution, I find many difficulties crop up. From the very wording of this Resolution, I find that this delay cannot be cut short, as the matter stands. First of all, the resolution says in its first clause "that no person shall be included in the electoral roll of any constituency" and then (a) and (b) and so on. But we are not told who is to be included; it puts the matter in a negative way. How those who prepared the electoral rolls are to proceed is not said here positively. Then, Sir, the only positive clause here is No. (4). There it says: "That, subject to the law of the appropriate legislature, a person who has migrated into a province or Acceding State on account of disturbances" and so on "shall be entitled.....". That is the only positive clause here. And we are not told who are the persons who are to be included in the electoral rolls otherwise. It has to be made clear. Then again, the dates given in clauses (2) and (3) are such that they will disenfranchise the vast number of people who would otherwise be entitled to vote when the elections actually take place. Sir, it is said in defence of these dates that if we adopt any further dates, the preliminary electoral rolls that have already been prepared would be disturbed and upset. On that account I urge that millions of people ought not to be disenfranchised. The authorities may adopt in the place of these dates other dates, whatever may be the inconvenience in the preparation of the electoral rolls, because the franchise of the people is surely more important than the inconvenience that may be caused to the authorities concerned, who are engaged in the preparation of electoral rolls.

Here, Sir, for determining the age, the date 1st January 1949 is given. It will not at all be difficult for determining the age if, say, a date such as the 1st January 1949 or even the 31st March 1950 is taken as the basis. That must be done, though it may cause some inconvenience in the matter of correcting the electoral rolls that have already been prepared.

Then again, Sir, for residence the date is fixed as the 31st March 1948. That can very conveniently be fixed as 31st March 1949, because in this case, those who prepare the electoral rolls must know where a person has actually resided in a particular place or constituency up to a particular period. Therefore, I think we cannot adopt the same date as we adopt as the basis for determining the age. However, this date can be changed into 31st March 1949.

Then again, in clause (4) I spoke of the difficulties which are confronted in the matter of this resolution. There is one phrase, in this clause (4). It says: "That, subject to the law of the appropriate legislature...". Here the honourable the Mover of the Resolution evidently has in mind the procedure that is to be adopted in this matter. But the phrase, as it stands, means that the appropriate legislature may even change the meaning of this clause, and may even change the phraseology. There is nothing here in this Resolution to say that the appropriate legislature shall not do anything to affect the franchise of the people concerned here in clause (4). Therefore, that has to be made clear. What is contemplated here must be made clear by making the phraseology of this clause clearer; that is, we have to make it clear that it is only the procedure that is intended, not the law itself, and the meaning of this Resolution shall not be tampered with or shall not be affected by any legislation that may be resorted to hereafter.

Then again, there is a lot of force in what some of the movers of the amendments said, with reference to certain words and phrases in this Resolution. It was pointed out that the word "already" refers only to the provisions that are passed before this Resolution is passed. If this word is retained here, that would really lead to a lot of contention and controversy. Therefore, there is no harm.....

Mr. Vice-President : May I say that the deletion of word "already" has been accepted?

Mr. Mohamed Ismail Sahib: So far so good.

Then, I do not know what the honourable Mover or his representative is going to do in the matter of this citizenship. There must be some instruction as to who should be included. Here you have said who should not be included in the electoral rolls. There must be some positive instruction as to who should be included.

Then again, I think there is a great deal of force in the contention that the Resolution cannot have legal force. The Honourable Mr. Santhanam explained that this is not meant to have any legal force or authority at all and that it is only for the purpose of facilitating the preliminary work of the preparation of electoral rolls and preliminary work of preparing for the general elections. It may be so, but, in course of these preparations, certain things might crop up. Certain people may go to a court of law, for example, for including their names or for setting aside the exclusion of their names. What force will this Resolution have and what will be the position of those contestants and what will be the position of this Resolution? That has also to be seriously considered. That is why I said that the delay which we want to compensate for cannot in any way be abrogated by such a Resolution as this. We would have done very well to expedite the passing of the Constitution and then taken up this question of conducting elections.

The Honourable Shri Satyanarayan Sinha (Bihar : General): Sir, the question may now be put.

Mr. Mohamed Ismail Saheb: Then, again, Sir, the question was raised with regard to the minorities.

An Honourable Member: There are no minorities.

Mr. Mohamed Ismail Saheb: It may be said that this question can be gone into after the preparation of electoral rolls, and that the electoral rolls can be so arranged, or can be so changed as to suit the provisions that may yet be passed by this honourable House. But, that would also lead to a lot of difficulties and inconvenience, and thereby we are not saving any time at all. That is what I wanted to say. Now, the whole point in bringing forward this Resolution is to avoid any great delay. My question is, are we really doing that?

The Honourable Shri Satyanarayan Sinha: Sir, I again move that the question be now put.

Some Honourable Members: No, No.

Mr. Vice-President : I would like to know the view of the House with regard to the closure motion just moved.

The Honourable Shri Satyanarayan Sinha: You may put it to vote, Sir.

Mr. Vice-President : I am putting to vote the closure motion.

The question is:

"That the question be now put."

The motion was adopted.

Mr. Vice-President : Dr. Ambedkar.

May I suggest that you read the resolution in the accepted form before you reply?

The Honourable Dr. B. R. Ambedkar : Yes; I will indicate the changes that I am going to accept.

Shri Deshbandhu Gupta: May I know, Sir, before Dr. Ambedkar proceeds to reply whether you have given any ruling on the point of order raised by me. I had raised a point of order that, unless the word "already" goes, this Resolution will be of no use because article 149...

Mr. Vice-President : I think the word "already" has already been omitted.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, with your permission, I propose to reply to the debate on behalf of the mover of this resolution.

Before I proceed to deal with the detailed amendments, I should like to propose myself certain amendments in the Resolution as was moved by the Mover.

The first amendment that I propose is, to delete the word "already" from paragraph 2.

My second amendment is to delete clause (a) from sub-clause (1), and delete also the letter and brackets "(b)" in the beginning of the second sub-clause, so that sub-clause (1) will read thus:

"That no person shall be included in the electoral roll of any constituency if he is of unsound mind and stands so declared by a competent court."

Then, in paragraph (4), I propose to make the following amendments. For the words "subject to the law of the appropriate legislature" in line of that paragraph, my amendment would be "notwithstanding anything in paragraph (3) above". In line 5 of that paragraph, for the words "a constituency", substitute the words "an area".

In the same line of the same paragraph, after the word "files", add the words, "or makes".

For the word "constituency" in the last line of the same paragraph, substitute the word "area".

These are my amendments. I shall briefly explain my amendments. The amendment which I have moved to drop the word "already" meets the point of order that was raised by Shri Deshbandhu Gupta.

Shri H. V. Kamath : On a point of order, Sir, has Dr. Ambedkar moved fresh amendments? In that case, there should be a discussion on those amendments. I want your ruling, Sir.

Mr. Vice-President : There is a Latin proverb which I learnt years ago.

"Summum justice summum injuris."

The letter of the law killeth but the spirit giveth the life.

Shri H. V. Kamath: In this Assembly, Sir, we have to observe as far as possible, the letter as well as the spirit of the law.

Mr. Vice-President : I am going by the spirit of the law. I do not care what rule I break.

Shri H. V. Kamath: May I say, Sir,.....

Mr. Vice-President : Will the honourable Member kindly resume his seat?

Shri H. V. Kamath : This is a desperate procedure, Sir, that is all I can say.

The Honourable Dr. B. R. Ambedkar: Sir, as I said, it is quite true that the word "already" raises the complications which Mr. Deshbandhu Gupta mentioned and it is only right that his objection should be removed by the deletion of the word "already".

With regard to the second amendment dropping clause (1), it seems to be quite unnecessary, because, the purport of that clause is embodied in paragraphs (3) and (4).

With regard to my next amendment to substitute the words "notwithstanding anything in paragraph (3) above" for the words "subject to the law of the appropriate legislature", my submission is that the original words were really unnecessary and inappropriate in a clause of that sort. Sub-clause (4) is really an exception to clause (3). That matter has been cleared by my amendment.

With regard to the word "constituency" I have substituted the word "area" in order to meet the criticism that at the stage when the rolls are prepared there are no constituencies and all that a man can indicate is an area, not a constituency, because, constituencies are not supposed to be in existence then.

My amendment for the addition of the words "or makes" meets the criticism that has been made that there are many people who are illiterate, who may not be in a position to sign an application and file it before a particular officer. The addition of the words "or makes" permits an oral declaration to be made either before a District Magistrate or before an officer who is preparing the electoral rolls. I think that objection is fairly met.

I will now take into consideration the other amendments which have been moved to this Resolution.

Shri L. Krishnaswami Bharathi : May I suggest one amendment to the Mover that his reason for amending 'constituency' in part. (4).....

Mr. Vice-President: You cannot tell it to the House. You can tell it to Dr. Ambedkar.

The Honourable Dr. B. R. Ambedkar : I am prepared to make the necessary consequential changes. As I said, I will turn to the other amendments and I take the amendment of my Friend Mr. Tyagi. If I understood him correctly,

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he had no objection to the Resolution in its general terms. What he wanted was that the details should be deleted. It seems to me that the position taken by my Friend Mr. Tyagi indicates that he has confusion in his mind about what the objective or the aim of the Resolution is. The aim of the Resolution is merely to make a declaration that it is the intention of this Assembly that as far as possible, election may be held sometime in 1950 but the object of the Resolution is to convey some positive directions to the authorities in charge of preparing the electoral rolls which is the basis of all elections. It would be futile and purposeless merely to make a declaration that this Constituent Assembly desires that the election should take place in the year 1950 without giving the directions to the authorities concerned in the matter of preparing the electoral roll. Because unless the electoral rolls are prepared in time sufficiently before the date of the election, no election can take place at all. The second part of the Resolution contains directions to the various authorities and unless the directions are embodied in the Resolution, the Resolution is merely a pious declaration which means nothing. It is setting out an objective without setting out the methods and the instruments by which that objective can be carried out and I think my friend Mr. Tyagi will understand that really speaking the part of the Resolution which he wants to omit is more important than the part of the Resolution which he wants to retain. Now I come to the amendment of my friend Mr. Hanumanthaiya.

Shri Mahavir Tyagi: What is your view about the word 'already'?

The Honourable Dr. B. R. Ambedkar : I have already said that I would delete it. Coming to the amendment of Mr. Hanumanthaiya, he wants to omit the words 'in the year 1950'. His argument has a good deal of sense behind it, because according to him if this Constituent Assembly were to make this declaration by this Resolution fixing 1950 as a target and if for some reason, either connected with the preparation of electoral rolls or some other circumstances, it becomes impossible to have elections in 1950, the Assembly would be placed in a somewhat difficult position. The Assembly might be accused of treating this as a trifling matter when as a matter of fact it is of great substance. But at the same time in view of what the Mover of the Resolution said that there is a certain amount of feeling in the country that we are not going as fast as we ought to in the passing of this Constitution, that our procedure is more leisurely, more dilatory and that is due to our not being very serious in having an early election, it is to remove that sort of feeling in the country that it is necessary to fix some target date and it is from that point of view that the retention of the words 'in the year 1950' becomes necessary. Of course, if reasons justified the postponement of the date, it would but be necessary for the Assembly to postpone the date of elections; and I am sure about it that if the Assembly is in a position to place before the country grounds which are substantial and which are not mere excuses, the country will no doubt understand the change and the postponement of the date.

Now my friend Mr. Saksena wants that instead of the 1st Jan. 1949 the date 1st Jan. 1950 be substituted. Mr. Bhargava wants that for 31st March 1948, the date 31st March, 1949 be substituted. Now having regard to what has already been done, it is not possible to accept either of these amendments. Mr. Saksena's amendment, if I understood him correctly, has the object that there ought not to be a considerable time lag between the date on which the electoral roll is prepared and the date on which election is held. In other words, the electoral roll must not be very stale and out-of-date. Now it seems to me that if our election is going to take place in 1950, the electoral roll which is prepared on the basis of the voter's qualification as his being an adult on 1st January 1949 cannot, by any stretch of imagination, be deemed to be a stale roll. My Friend Mr.

Saksena must be aware of the fact that all electoral rolls generally lag behind the date of election by one year.

Prof. Shibban Lal Saksena : It will become two years old !

The Honourable Dr. B. R. Ambedkar : Therefore if persons who are entitled to be voters in the electoral rolls on the basis of their single solitary qualification which we have, *viz.,* his being a man of 21 years of age on the 1st January 1949 and if the election takes place in the year 1950 on some date not possible to prescribe, I think it cannot be said that the electoral roll will be a Stale roll.

Now I am coming to the amendment of Pandit Bhargava. He wants that the date of 31st of March 1949 be substituted. It is not possible to accept that amendment because in the expectation of the election taking place in the year 1950, instructions were already issued to the various Provincial Governments on the 1st March 1948 to proceed to prepare the electoral rolls on the basis of adult suffrage. It seems to me that if we accept the amendment of Pandit Bhargava, we shall have to waste all the work that has already been done by Provincial Governments on that basis. I do not think there will be any waste of work already done, because all those who on the 1st January, 1948 would be adults, would be added on to the roll that has already been prepared.

The Honourable Shri K. Santhanam : Is it not necessary also to change the date 1st January 1949 to 31st March 1948, in sub-para. (2)?

The Honourable Dr. B. R. Ambedkar : No, I do not think so.

Now, I come to the amendment of my friend Mr. Chaudhari. It seems to me that he is asking for something which is quite impossible, if not ridiculous. He says that every person who is of unsound mind should be deprived of his vote. We all agree that unsound persons should not be included in the voters' list. But the question remains as to who is to determine whether a person is of unsound mind or not. It seems to me that unless the qualification which is introduced in this motion says that a person can be excluded from the electoral roll only when he has been adjudged to be of unsound mind by some impartial judicial authority, seems to be the soundest proposition. Otherwise, to give the authority to a village Patwari not to enter a certain person in the electoral roll because he thinks that he is of unsound mind is really to elevate a cabin boy to the position of the captain of a ship, and I think it is not possible to accept such an amendment.

My friend Mr. Kamath raised some question with regard to a clause that was passed the other day, in which in addition to unsoundness of mind, certain other disqualifications were mentioned, particularly those relating to crime.

Shri Deshbandhu Gupta : Will all the inmates of lunatic asylums be included in the electoral rolls, in the first instance?

The Honourable Dr. B. R. Ambedkar : I do not know the case of other provinces, but so far as Bombay is concerned, unless the Chief Presidency Magistrate declares a person to be of unsound mind no lunatic asylum would admit him.

Mr. Vice-President: Yes, that is the case in Bengal.

The Honourable Dr. B. R. Ambedkar : And it seems to be the case in Bengal also. It is there in the Lunacy Act.

Now, with regard to the question of crime all that I need say is this that the Drafting Committee, in using the word 'crime' in that particular article, was merely reproducing the provision contained in the Sixth Schedule of the Government of India Act, and I do not think that the Drafting Committee had anything more in mind than what is stated in that article. According to that article, the commission of a crime is not by itself any disqualification.

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The disqualification is only when a person is punished and detained in imprisonment. It is during the period of imprisonment that he loses the right to vote. That point can be further accommodated when we come to the additional disqualifications mentioned in the article to which Mr. Kamath referred.

Shri H. V. Kamath : Am I to understand that grounds of crimes, corrupt or illegal practices etc. of which a person may be convicted in the past will not act as a disqualification or bar to his registration as a voter?

The Honourable Dr. B. R. Ambedkar : Yes, and those will be prescribed by Parliament.

Mr. Vice-President : I am going to put to vote the amendments which have been moved in this House, one by one. The first one is that standing in the name of Shri Rohini Kumar Chaudhari. And he has two amendments. I am putting them to vote, one by one. The question is:

"That in sub-section (b) of the Resolution the words 'and stands so declared by a competent Court' be deleted."

The amendment was negatived.

Mr. Vice-President : Then I put the second part. The question is :

"That in sub-paragraph (4) the word 'permanently' occurring in line 6 be deleted."

(Interruption)

The amendment was negatived.

Mr. Vice-President : I know that school boys on the eve of the vacation behave not always wisely.

The next amendment is that of Pandit Thakur Dass Bhargava. The question is:

"That for the words 'files a declaration' substitute the words 'expresses the intention'."

But this is covered by what Dr. Ambedkar has accepted.

Then his other amendment is that in paragraph 3, for the words "31st March 1948", substitute the words "31st March 1949".

The amendment was negatived.

Mr. Vice-President : Then we come to the amendment of Mr. Hanumanthaiya.

Shri K. Hanumanthaiya : Sir, I seek permission of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Then we come to the amendment of Mr. Nagappa. But that is covered by Dr. Ambedkar's amendment and so it will not be put to vote.

Then there is the amendment of Mr. Tyagi.

Shri Mahavir Tyagi : Sir, I request leave of the House to withdraw my amendment.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Then comes the amendment of Prof. Saksena seeking to substitute 1st January 1950, for the words 1st January 1949.

The question is :

"That the words '1st January 1949' in sub-paragraph (2) be substituted by '1st January 1950'."

The amendment was negatived.

Mr. Vice-President : The second part has been accepted by Dr. Ambedkar and therefore need not be voted on. Then we come to the third part. But that is also covered by Dr. Ambedkar's amendment.

But he has a further amendment to the effect.

The question is:

"That the word 'permanently' in the last line of sub-para. (4) be deleted."

The amendment was negatived.

Mr. Vice-President : Now, I put the Resolution, as amendment by Dr. Ambedkar's amendments, to vote. Does the House want me to read it out?

Honourable Members : No, no.

Mr. Vice-President : So the question is:

"That the *Resolution, as amended, be accepted."

The motion, as amended, was adopted.

DRAFT CONSTITUTION—*(Contd.)*

Article 149—*(Contd.)*

Mr. Vice-President : Now we come to article 149. I think there has been sufficient discussion on this article and Dr. Ambedkar will now reply.

The Honourable Dr. B. R. Ambedkar : Mr. Vice-President, Sir, in reply to the debate on article 149, I wish, first of all, to make clear my position with regard to my own amendment which was No. 2255. I want the permission of the House to withdraw this amendment; and in lieu of that I accept amendment No. 2249, as amended by amendment No. 48 of List II by Mr. Naziruddin Ahmad.

I also accept amendments Nos. 62 and 66 of List IV by Sri T. T. Krishnamachari, amendment No. 2252 as modified by the amendment of Mr. Bhargava and amendment No. 2263 as modified by amendment No. 67 of Shri Shibban Lal Saksena.

Now, Sir, so far as the general debate on the article is concerned, it seems to me that there are only two points that call for reply. The first point is with regard to the census figures to be adopted for the purpose of the new elections. A great deal of argument was concentrated by many speakers on the fact that the census in certain provinces is not accurate and does not represent the true state of affairs so far as the relative proportions of the different communities are

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*Resolved that instructions be issued forth with to the authorities concerned for the preparation of electoral rolls and for taking all necessary steps so that elections to the Legislatures under the new Constitution may be held as early as possible in the year 1950.

Resolved further that the State electoral rolls be prepared on the basis of the provisions of the new Constitution agreed to by this Assembly and in accordance with the principles herein after mentioned, namely:—

(1) That no person shall be included in the electoral roll of any area if he is of unsound mind and stands so declared by a competent court.

(2) That 1st January 1949 shall be the date with reference to which the age of the electors is to be determined.

(3) That a person shall not be qualified to be included in the electoral roll for any area unless he has resided in that area for a period of not less than 180 days in the year ending on the 31st March 1948. For the purposes of this paragraph, a person shall be deemed to be resident in any area if he ordinarily resides in that area or has a permanent place of residence therein.

(4) That, notwithstanding anything in paragraph (3) above a person who has migrated into a Province or Acceding State on account of disturbances or fear of disturbances in his former place of residence shall be entitled to be included in the electoral roll of an area if he files or makes a declaration of his intention to reside permanently in that area.

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concerned. I think there is a great deal of force in such arguments and, if I may say so, there is enough testimony which one can collect from the Census Commissioners' Reports themselves to justify that criticism. I had intended to refer to the statements made by the Census Commissioners on this issue. But, as there is no time, I think I had better not refer to them. Further, the large majority of the members who have spoken on this subject know the facts better than I do. I only want to add one thing and that is that if any people have suffered most in the matter of these manipulations of census calculations by reason of political factors, they are the Scheduled Castes (*Hear, hear*). In Punjab for instance, the other communities are trying to eat up the Scheduled Castes in order to augment their strength and to acquire larger representation in the legislature for themselves. These poor people who have been living mostly as landless labourers in villages scattered here and there, with no economic independence, with no support from the authorities,—the police or the magistracy,—have been, by certain powerful communities, either compelled to return themselves as members of that particular community or not to enumerate at the elections at all. The same thing has happened to a large extent, I know, in Bengal. For some reason which I have not been able to understand, a large majority of the Scheduled Castes there refused to return themselves as Scheduled Castes. That fact has been noted by the Census Commissioners themselves. I therefore completely appreciate the points that have been made by various members who spoke on the subject that it would not be fair to take the figures of that census.

An Honourable Member : What about Assam?

The Honourable Dr. B. R. Ambedkar : It may be true of Assam also. I am not very well acquainted with it. As I said I fully appreciate the point that to take those census figures and to delimit constituencies or allocate seats between the different constituencies and between the majority and minority communities would not be fair. Something will have to be done in order to see that the next election is a proper election, related properly to the population figures of the provinces as well as of the communities. All that I can do at this stage is to give an assurance that I shall communicate these sentiments to those who will be in charge of this matter and I have not the least doubt about it that the matter will be properly attended to.

Sir, if the Members who are interested in it are not satisfied with the assurance that I am giving now, they can at some stage—it is not possible to do it now—move an amendment to article 149 permitting the President to have an interim census, if he deems it necessary, taken, for the purpose of removing the grievances to which they have referred. In fact, I have with me a draft which might be considered at a later date. Some such draft like this may be considered: "Provided further that the initial representation of the several territorial constituencies of the legislative assembly of any State may be determined in such other manner as the President may by order direct." That would be general enough and would deal with the difficulty which has been pointed out.

An Honourable Member: Why do you not move it now?

The Honourable Dr. B. R. Ambedkar : There is no time for it now. If Members are not prepared to rely upon the assurance given by me some such motion may be moved at the appropriate stage.

With regard to the point raised by my honourable Friend Prof. Saksena in amendment No. 64, I may say that I whole heartedly support it. I think the proviso he has sought to introduce is a very necessary one. The House will

remember that it deals with weightage in representation. We have, in this Constitution, eliminated all sorts of weightages. Weightage to all minorities we have eliminated. Weightage to territories in the representation in the Central Legislature we have eliminated. Weightage between representatives in British India and representatives of Indian States we have eliminated. I think therefore that it is only right that the same principle should apply to representation in legislatures. I therefore accept that amendment.

Sir, I do not think there is any other point worthy of consideration or calling for reply. I therefore recommend to the House the acceptance of article 149, as amended.

Mr. Vice-President : I am now going to put the amendments to vote one by one.

The question is:

"That the following new clauses be added after clause (2):—

'(2-a) No person shall be entitled to be a candidate or offer himself for election to either House of a State Legislature, if Bicameral, or to the Legislative Assembly of the State, who is duly certified to be of unsound mind, or suffering from any other physical or mental incapacity, duly certified, or is less than 25 years of age at the time of offering himself for election, or has been proved guilty of any offence against the safety, security or integrity of the Union, or of bribery and corruption, or of any malpractice at election, or is illiterate.'

'No one who is unable to read or write or speak the principal language spoken in the State for a seat in whose Legislature he offers himself for election, or after a period of ten years from the date of the coming into operation of this Constitution, is unable to read or write or speak the National Language of India, shall be entitled to be a candidate for or offer himself to be elected to a seat in the State Legislature, or either House thereof.'

'(2-b) The election shall be on the basis of proportional representation with a Single Transferable Preference Vote. For the purpose of election, every State shall be deemed to be a single constituency, and every member shall be deemed to have been elected in the order of Preference as recorded by the electors; and this arrangement shall hold good in the case of a General Election, as well as at a by-election, if and when one become necessary:

Provided that where there is a second chamber in any State, the voters may be grouped, for electing members to the Legislative Council, on the basis of trade, profession, occupation or interest recognised for the purpose by an Act of the State Legislature, each trade, profession, occupation or interest voting as single constituency for the entire State'."

The amendment was negatived.

Mr. Vice-President : Amendment No. 2248. The question is:

"That clause (3) of article 149, be deleted and the following be substituted:—

'The representation in the State Legislature shall be on the basis of one representative for every lakh of population:

Provided that the total number of members in the Legislative Assembly of a State shall in no case be less than sixty'."

The amendment was negatived.

Mr. Vice-President : There is a short notice amendment to amendment No. 2249 by Pandit Thakur Dass Bhargava.

Pandit Thakur Dass Bhargava : I would like to withdraw it, Sir.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Amendment No. 48 of List II. The question is:

"That for amendment No. 2249 of the List of Amendments, the following be substituted:—

'That in clause (3) of article 149, for the words "last preceding census", the words "last preceding census of which the relevant figures have been published" be substituted'."

The amendment was adopted.

Mr. Vice-President : Amendment No. 62 of List IV. The question is:

"That with reference to Amendment Nos. 2249 and 2250 of the List of Amendments in clause (3) of article 149, for the words 'every lakh' the words 'every seventy-five thousand' be substituted."

The amendment was adopted.

Mr. Vice-President : Then we come to Amendment No. 2252 as amended by a short notice amendment of Mr. Bardoloi which reads :

"With reference to amendment No. 2252 of the List of Amendments, after the words 'autonomous districts of Assam' the words 'and the constituency comprising the cantonment and municipality of Shillong' be added."

The amendment was adopted.

Mr. Vice-President : Amendment No. 66 of List IV. The question is:

"That with reference to Amendment Nos. 2256, 2257 and 2258 of the List of Amendments, in the proviso to clause (3) of article 149, for the words 'three hundred' the words 'five hundred' be substituted."

The amendment was adopted.

Mr. Vice-President : Dr. Ambedkar wanted the leave of the House to withdraw his Amendment No. 2255. Is that permission given?

Honourable Members : Yes.

The amendment was, by leave of the assembly withdrawn.

Mr. Vice-President : Amendment No. 49 of List II. It is blocked.

Then we come to Amendment No. 2256. The question is:

"That in the proviso to clause (3) of a article 149, for the words 'three hundred' the words 'four hundred and fifty' be substituted."

The amendment was negatived.

Mr. Vice-President : Amendment No. 35 of List I.

The amendment was, by leave of the Assembly, withdrawn.

Mr. Vice-President : Amendment No. 67 of List IV. The question is:

"That after clause (3) of article 149, the following new clause be inserted:—

'(3-a) The ratio between the number of members to be allotted to each territorial constituency in a State and the population of that constituency as ascertained at the last preceding census of which the relevant figures have been published shall, so far as practicable, be the same throughout the State'."

The amendment was adopted.

Mr. Vice-President : There is an amendment to Amendment No. 67 but it is blocked.

Prof. Shibban Lal, do you want me to put your Amendment No. 2263 to the vote? It has been amended by No. 67.

Prof. Shibban Lal Saksena: It is not necessary to put it to vote now.

Mr. Vice-President : I shall now put the article in its present form to vote. The question is:

"That article 149, as amended, stand part of the Constitution."

The motion was adopted.

Article 149, as amended, was added to the Constitution.

Mr. Vice-President : There is one announcement which has got to be made. I have received definite information and instructions from our President that he would like to have the next session of the Constituent Assembly on Monday.

the 16th May. Under rule 19 of the Rules of Procedure, the President enjoys the power of fixing the date but he cannot adjourn the House for more than three days. I therefore seek the permission of the House to make this announcement formally.

Pandit Lakshmi Kanta Maitra : But why does he want to fix the date before hand?

Mr. Vice-President : I am sorry I cannot give you the reason.

The Honourable Shri K. Santhanam : The date may be fixed by a motion put before the House and carried.

The Honourable Shri Satyanarayan Sinha : Sir, I move that the House do adjourn to the 16th May next.

The motion was adopted.

Mr. Vice-President : The House stands adjourned to Monday, the 16th May. The Assembly then adjourned till Monday, the 16th May 1949.